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In The

Supreme Court of the United States

October Term, 1984

STATE OF DELAWARE,

Petitioner,

v.

ROBERT E. VAN ARSDALL,

Respondent.

On Writ of Certiorari to
the Supreme Court of Delaware

JOINT APPENDIX

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RELEVANT DOCKET ENTRIES IN
THE SUPERIOR COURT OF THE STATE
OF DELAWARE IN AND FOR KENT COUNTY

State of Delaware v. Robert E. Van Arsdall
Crim. Action Nos. IK82-01-0073, 0074

January 1, 1982 Arrested; warrants issued through Justice of the Peace Court No. 7. Committed without bail on first degree murder; committed in lieu of \$5,000 secured bond on possession of a deadly weapon during the commission of a felony.

January 26, 1982 Preliminary hearing, Court of Common Pleas of the State of Delaware in and for Kent County.

March 1, 1982 True bill.

March 12, 1982 Arraignment. Defendant waived reading of indictment. Pled not guilty. Jury trial requested.

September 13, 1982 Jury trial and deliberations before William G. Bush, III, J. Guilty of first degree murder and possession of a deadly weapon during the commission of a felony. Pre-sentence investigation ordered.

October 1, 1982

October 29, 1982 Sentencing before William G. Bush, III, J.: IK82-01-0073 (first degree murder)—To be imprisoned for a period of life, beginning January 1, 1982, without eligibility for probation or parole. IK82-01-0074 (possession of a deadly weapon during the commission of a felony)—Pay costs of prosecution (suspended); to be imprisoned for a period of thirty years,

consecutively to the sentence in IK82-01-0073, without eligibility for probation or parole during the first five years of this sentence. Defendant to be delivered to the Department of Corrections.

**RELEVANT DOCKET ENTRIES IN
THE SUPREME COURT OF DELAWARE**

**Robert E. Van Arsdall v. State of Delaware
No. 346, 1982**

November 4, 1982 Notice of appeal filed.

October 31, 1983 Brief for Appellant (Robert E. Van Arsdall).

February 29, 1984 Brief for Appellee (State of Delaware).

September 10, 1984 Argument before Justices John J. McNeilly, Andrew G.T. Moore, II, and Andrew D. Christie.

November 19, 1984 Opinion, Christie, J., reversed and remanded.

December 4, 1984 Motion of Appellee for rehearing en banc.

December 12, 1984 Order, Christie, J., motion for rehearing en banc denied.

December 14, 1984 Record and mandate to Prothonotary, Kent County. Case closed.

December 28, 1984 Corrected page 6 of November 19, 1984 opinion issued.

JUDGMENTS AND DECISIONS IN QUESTION

The opinion of the Delaware Supreme Court dated November 19, 1984 is officially reported at 486 A.2d 1 and is printed in the Appendix to the Petition for Writ of Certiorari at A-1 through A-23. The December 12, 1984 order of the Delaware Supreme Court denying the State of Delaware's motion for rehearing en banc is printed in the Appendix to the Petition for Writ of Certiorari at B-1.

TRANSCRIPT OF STATE'S EXHIBIT 72, STATE OF DELAWARE v. ROBERT E. VAN ARSDALL, Crim. Action Nos. IK82-01-0073, 0074, SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR KENT COUNTY

[1]¹ It is now 1333 hours. Present are Chief McGinty, Daniel Pregent and myself, Detective Bowers. The date is 1-5-82. [Miranda warnings and waiver deleted.]

Bowers: Do you wish to make any statement in reference to the statement you just heard?

Pregent: Not in reference to the statement I heard. I believe everything I said in all statements up to now are to the best of my ability. I think I am perfectly okay. I am still sticking by everything I said. I don't want to change anything I said.

Bowers: In other words, you are saying that you didn't commit the act of murder nor did you have anything to do with it.

McGinty: Nor do you know anything about it?

Pregent: Nor do I know anything about it.

Bowers: Then, why was it you stated that you were wrapped up in a blanket, the body must have been dragged across you. There was no blood on the blanket whatsoever.

[2] Pregent: When I was woken up, I didn't even notice any blood anywhere. I was still groggy. I didn't notice

¹The tape recording, State's Exhibit 72, was introduced into evidence at Vol. X, pg. 9 of the trial transcript. The transcript of the tape was not admitted into evidence, but counsel for petitioner and respondent stipulate that it is an accurate transcript of the tape.

anything until I was out in the hallway. The first I saw of it was when I looked back in and saw part of it.

McGinty: How do you explain the fact that when the officers recovered you from that bed in the bedroom you were covered up with a blanket and there was absolutely no blood on the blanket? However, on your trousers there were stains that appeared to be blood? How do you explain that?

Pregent: I can't.

McGinty: Your statement is that you were in that bed and you have no knowledge of anything that went on in that apartment?

Bowers: Even as far as any sex acts by you or Van Arsdale?

Pregent: That is right.

Bowers: You don't know of any sex act that was performed?

Pregent: None at all.

Bowers: So you do not wish to make any other statement?

Pregent: If you have any other questions to ask me, I will answer them.

Bowers: When Van Arsdall came to your apartment, did you meet him in the street or did he . . .

Pregent: I first met him in the street and he had other business to attend to so I showed him the back way to the apartment up the steps, so he didn't have to go banging on the front door. It would be easier to go right

up to the apartment so I showed him that way and later on in the evening, a couple of hours or so, he came back up.

[3] Bowers: About what time was this when you first saw him?

Pregent: It was still daylight, so it was probably before 5:00. Probably about approximately 4:00 or 5:00.

Bowers: What time did he get to your apartment when he came back?

Pregent: After dark, maybe—this is all approximate, I wasn't wearing no watch—maybe 6:30 or so.

Bowers: Did he leave between then and the time you were awakened by the police?

Pregent: He might have, I didn't keep track of everybody's comings and goings.

Bowers: Do you remember when Crain left?

Pregent: Vaguely.

Bowers: Was Van Arsdall there then?

Pregent: He might have been, like I said, I didn't keep track of people. We were visiting next door to talk and it wasn't just a thing where everybody just sat down and stayed there. We were moving around.

Bowers: So you don't want to make a statement in reference to Van Arsdall and the murder or you and the murder?

Pregent: No, because I don't know if he did it or not. I don't think he did. Because I have known him for a

while and I never saw any indication that he would do anything like that. He has been a friend of mine so I can't say anything against him.

Bowers: You don't think he did it?

Pregent: No, I don't.

[4] Bowers: Who do you think did it?

Pregent: Who I think did it—I think it was somebody that knew her like maybe a jealous boyfriend or something like that.

Bowers: How would he have gotten into your apartment?

Pregent: I am not sure if the back door was locked or not. I didn't secure the place like I should have. I laid down and went to sleep.

Bowers: Van Arsdall claims he got there about 11:30. He stated that you were the one that drug the body across him.

McGinty: He also stated that he attempted to stop you and when he did he was struck by you.

Pregent: I can't account for that statement.

McGinty: You are saying that you don't know whether you struck him, you don't know whether you committed this crime?

Pregent: I am sure that I didn't. For one reason, my hand has started to get better and I can almost make a complete fist now. A couple of days before that, I had gotten angry—I have a brick wall in my apartment—I figured I couldn't hurt it so I hit it with my right hand.

McGinty: You struck a brick wall?

Pregent: Yes, I did.

McGinty: Do you often have fits of rage like that and strike walls?

Pregent: No, not very often.

McGinty: Not very often, but it does happen?

Pregent: Occasionally I get mad and I feel like hitting something like any other normal human being.

[5] McGinty: Would you say that this is the practice of a normal human being to strike a wall?

Pregent: In the process of aggravation, people have been known to throw things and stuff like that. I don't consider it right, but I would see it as normal.

McGinty: It is a practice of yours?

Pregent: Not very often—maybe once every couple of years or something.

STATE'S EXHIBIT 73, STATE OF DELAWARE v.
 ROBERT E. VAN ARSDALL, Crim. Action Nos. IK82-
 01-0073, 0074, SUPERIOR COURT OF THE STATE OF
 DELAWARE IN AND FOR KENT COUNTY

[1]² I am Detective Carlton Bowers of the Smyrna Police Department. Present is Chief Donald McGinty and one Robert Van Arsdall. The time is 0653 hours, the date 01-01-82. This is reference to a homicide which occurred this date. [Miranda warnings and waiver deleted.]

Bowers: Robert, where were you earlier this morning?

Van Arsdall: I was at a New Year's Eve Party, I stopped up there.

Bowers: New Years party where?

Van Arsdall: No special place, we were just riding around.

Bowers: Who is we?

Van Arsdall: Me and a couple friends of mine.

Bowers: Who are they? Do you know their names?

Van Arsdall: Yes, I know their names but I don't want to get them involved. They had nothing to do with it.

Bowers: After you were riding around, what happened then?

²The transcript is admitted into evidence at Vol. X, pg. 12 of the trial transcript. The actual tape, State's Exhibit 28, was introduced into evidence at Vol. VII, pg. 84 of the trial transcript.

Van Arsdall: I got tired and told them to drop me off at Danny's, I was going to sack out. I got to Danny's and I talked a little while. I laid down. A little while later, I felt like I was going to be sick [2] so I went out into the hallway to get some air and there was this one lady across the hall.

Bowers: What lady was that?

Van Arsdall: I don't know what her name was. It was a blonde haired lady. Then I came back in and saw that and then I got sick.

Bowers: How long were you out in the hall?

Van Arsdall: I really don't know. I lost my watch sometime last night.

Bowers: What type of watch was it?

Van Arsdall: Timex.

Bowers: Have any idea where you lost the watch?

Van Arsdall: No I don't. I lost it somewhere last night.

Bowers: Who was at Danny's apartment when you arrived?

Van Arsdall: There was someone asleep on the bed.

Bowers: He didn't say who it was?

Van Arsdall: No he didn't.

Bowers: Did you see that person asleep on the bed?

Van Arsdall: There was someone on the bed. I couldn't tell who it was. It was too dark, I couldn't get a look.

Bowers: You don't know if it was a male or female?

Van Arsdall: No I don't.

Bowers: You said you wanted to take a nap. Where did you take a nap at?

Van Arsdall: He had the cushions from the sofa down on the floor. That's where I laid down at.

Bowers: Floor in what room?

Van Arsdall: In the same room.

[3] Bowers: The bedroom?

Van Arsdall: Yeah.

Bowers: Is this where Danny and this person was asleep?

Van Arsdall: Yeah.

Bowers: Was there anyone else in the apartment?

Van Arsdall: Not that I know of.

Bowers: Did you eat anything earlier that night at that apartment?

Van Arsdall: I had some spaghetti and pork chops.

Bowers: Who fed that to you?

Van Arsdall: Danny gave that to me.

Bowers: Was there anyone else there at the time?

Van Arsdall: There was some other people there.

Bowers: Such as.

Van Arsdall: No reply.

Bowers: You don't know who they were?

Van Arsdall: I know who they were but I don't want to get them involved in this.

Bowers: Why don't you want to get them involved?

Van Arsdall: Because they're friends of mine.

Bowers: You're involved.

Van Arsdall: I know I'm involved but I didn't have a God damned thing to do with it.

Bowers: You didn't have anything to do with what?

Van Arsdall: Whoever did that shit to whoever it was in there.

Bowers: What was done? What did you see?

[4] Van Arsdall: I went in there and I got blood all over me. I went in there to see what I could do for the lady and her heart was still pumping and it got blood all over me. I kneeled down beside her and that's when her heart stopped.

Bowers: What did you see when you went in there?

Van Arsdall: Gross.

Bowers: Describe it to me.

Van Arsdall: Her stomach was cut open. Half her guts was hanging out. A damn pool of blood was all over the damn place.

Bowers: So why didn't you contact the police?

Van Arsdall: I hollered for somebody to call the police.

Bowers: You did?

Van Arsdall: Yeah.

Bowers: Did anyone go for the police?

Van Arsdall: I believe so.

Bowers: Who went?

Van Arsdall: There was somebody out in the hall when I hollered to get the police and I believe they went and called you guys.

Bowers: Did you have a knife earlier this evening?

Van Arsdall: No sir.

Bowers: You didn't have a knife at all?

Van Arsdall: No—unintelligible.

Bowers: How did you get so much blood on your clothes?

Van Arsdall: I went in to see what I could do for the lady and her heart was still beating and blood was flowing that's where. That is how it got all over my clothes. I knelt down beside her and blood was all over the damned floor.

[5] Bowers: Was there anyone else in the apartment when you went in there?

Van Arsdall: I'm not sure there was. I believe Danny was still asleep on the bed. I'm not sure.

McGinty: You stated earlier that you were in there asleep and you got up and felt sick and you went out in the hall?

Van Arsdall: Yeah

McGinty: What time was that?

Van Arsdall: I don't know.

McGinty: How long were you out in the hall?

Van Arsdall: I really don't know, I lost my watch.

Bowers: Where did the scratches come from on your left arm?

Van Arsdall: Where?

Bowers: On your left arm?

Van Arsdall: No reply.

Bowers: Around your tatoo, right on your forearm?

Van Arsdall: There's no scratches, that's part of the tattoo.

Bowers: That red is part of the tattoo?

Van Arsdall: Yes it is, that's coloring.

Bowers: Where did the bruises come from on your knuckles?

Van Arsdall: Well I was playing with the cat, he has a cat up there. I was playing with the cat.

Bowers: The cat put bruises on your knuckles?

Van Arsdall: I don't have no bruises on my knuckles.

Bowers: Your knuckles are bruised.

Van Arsdall: No they're not.

[6] Bowers: I say they are.

Van Arsdall: I don't see no bruises on my knuckles. All I see are scratches from the cat.

Bowers: Is that where the scratches came from?

Van Arsdall: Yeah.

Bowers: Did you see anybody by the name of Fleetwood?

Van Arsdall: He was in the other apartment. He was passed out on the couch.

Bowers: Who else saw you, he didn't see you so who else saw you. He was passed out. Did you see anybody by the name of Doris?

Van Arsdall: All I know is that a blond haired lady was there.

Bowers: What was her name?

Van Arsdall: I don't know her name.

Bowers: You don't know her name?

Van Arsdall: No I don't.

Bowers: There was only one lady up there?

Van Arsdall: Just one.

Bowers: That's all you saw? What apartment was she in?

Van Arsdall: Same one as Fleetwood was in.

Bowers: She was in Fleetwood's apartment?

Van Arsdall: Yeah, she came to the door.

Bowers: You didn't see her in another apartment at all?

Van Arsdall: No.

Bowers: See a guy by the name of Bobby?

Van Arsdall: Yeah, Bobby Fleetwood.

[7] Bowers: Another guy by the name of Bobby, a black guy?

Van Arsdall: Unintelligible.

Bowers: Were there any black guys up there?

Van Arsdall: There was a couple.

Bowers: But you didn't know who they were? Did you see a lady named Ida Mae up there?

Van Arsdall: She was there earlier, way earlier.

Bowers: Isn't it true that you did talk to that lady that was killed earlier this morning?

Van Arsdall: I don't even know who she was.

Bowers: Her name was Doris, a black lady. Witnesses said that you did talk to her.

Van Arsdall: I said, how are you. She said, fine.

Bowers: That was it? So you saw her before she went to sleep?

Van Arsdall: I saw her earlier.

Bowers: What was she doing earlier?

Van Arsdall: I believe she was doing something in the kitchen. Unintelligible.

Bowers: Earlier Robert, you said you didn't see her.

Van Arsdall: Hmm?

Bowers: Earlier in this statement you said that you didn't see her.

Van Arsdall: What statement?

McGinty: The one you are giving right now.

Van Arsdall: You guys are trying to confuse me.

Bowers: We are not trying to confuse you, just asking questions.

Van Arsdall: The hell you ain't.

[8] Bowers: We are just asking questions Robert. Did you have sex with anyone this evening?

Van Arsdall: No sir.

Bowers: None at all?

Van Arsdall: No sir.

Bowers: Did you have a fight with anyone this evening?

Van Arsdall: No.

Bowers: No fight at all?

Van Arsdall: No.

Bowers: You didn't tell anyone at the party that you were in a fight?

Van Arsdall: No.

Bowers: How did you explain the blood on your clothes then when they saw you?

Van Arsdall: I just told them there was somebody over there dead.

Bowers: When you went to help her, in what manner did you do it? You said as soon as you got over there to her, her heart quit beating.

Van Arsdall: I knelt down.

Bowers: Would you show us how you knelt down?

Van Arsdall: I knelt down beside of her.

Bowers: In what manner?

Van Arsdall: I don't remember exactly in what manner I knelt down. I just know I was getting blood all over me. When I picked up her hand to get a pulse her heart stopped. That's all I know. She was dead.

Bowers: Then what did you do after that?

Van Arsdall: I hollered for somebody to call the police and I just flew out of the apartment.

[9] Bowers: I asked you a question earlier in reference to a knife. You don't recall having a large knife earlier this evening?

Van Arsdall: No I don't.

Bowers: Had you been drinking earlier this evening or this morning?

Van Arsdall: I had been drinking a little bit that evening.

Bowers: How much did you have to drink?

Van Arsdall: Quite a bit.

Bowers: How much is that, approximately?

Van Arsdall: I don't know approximately.

Bowers: Were you drinking beer, liquor or what?

Van Arsdall: A little of both.

Bowers: Did you do any drugs this morning?

Van Arsdall: No.

Bowers: You don't do drugs? You don't smoke pot?

Van Arsdall: Once in a while.

Bowers: You didn't smoke any this morning?

Van Arsdall: No, I didn't smoke.

Bowers: I was told that you did smoke pot this morning.

Van Arsdall: No.

Bowers: You don't recall?

Van Arsdall: I know damned well I didn't.

Bowers: Have you ever seen the lady before this morning that was killed?

Van Arsdall: No.

Bowers: You've never seen her before? This morning was the first time?

Van Arsdall: Yes.

[10] Bowers: Did she know you?

Van Arsdall: No.

Bowers: Did you make a statement this morning to someone in reference that you did assault somebody?

Van Arsdall: No.

Bowers: You didn't at all? I have two witnesses who said you did.

Van Arsdall: What two witnesses?

Bowers: They said you had got in a fight.

Van Arsdall: No.

Bowers: Would you roll both of your sleeves up Robert?

Van Arsdall: The only scratches I've got is from the damned cat.

Bowers: Turn your arms the other way. You don't recall when you lost your watch?

Van Arsdall: No I don't.

Bowers: When was the last time you saw the watch?

Van Arsdall: Well I guess it was around 10:30 or 11:00, I believe.

Bowers: Where were you prior to that?

Van Arsdall: I was at a friend's house. Stopped at a friend's house.

Bowers: Here in town?

Van Arsdall: No.

Bowers: What time did you go to the party up there at Danny's house?

Van Arsdall: That was earlier.

Bowers: What time was that?

[11] Van Arsdall: About 4:30 to 6:00.

Bowers: You were there from 4:30 up until the time the police got there?

Van Arsdall: No I left. Unintelligible.

Bowers: What time did you leave?

Van Arsdall: About 6:00.

Bowers: You came back at what time?

Van Arsdall: It was after I left my friend's house. I had to walk all the way.

Bowers: So what time did you get back to Danny's?

Van Arsdall: It must have been close to 12:00 I believe.

Bowers: You went straight to Danny's apartment when you got there or did you go to Fleetwood's apartment?

Van Arsdall: I went straight to Danny's. I went up the back way.

Bowers: Who let you in the back way?

Van Arsdall: Danny did.

Bowers: He was up when you got there?

Van Arsdall: Uh huh.

Bowers: Where was the lady at when you got there?

Van Arsdall: Whoever it was, I think she was in bed. I know there was somebody in the bed.

Bowers: How did you know that?

Van Arsdall: I could see somebody laying there. I don't know who it was or anything. I could just see somebody laying there.

McGinty: When you got back there to their house, you say you saw somebody laying on the bed. What did you do then?

[12] Van Arsdall: Danny and I talked for a while.

Bowers: Where were you when you were talking?

Van Arsdall: Out in the kitchen. I asked him if I could make myself a couple of peanut butter sandwiches and he said yes.

Bowers: So this person was still in bed then?

Van Arsdall: As far as I know.

Bowers: Was the sofa bed open or closed?

Van Arsdall: It was open.

Bowers: It was open when you got there.

McGinty: After you made the sandwiches, what did you do then?

Van Arsdall: I went in the bedroom. I laid on the sofa cushions. He sat on the corner of the bed and we talked a while then he crashed out. I laid there for a while and thought I was going to be sick so I went out to get some air.

McGinty: When you went out to get some air, where did you get some air?

Van Arsdall: I just walked up and down the hall.

McGinty: Up and down the hall?

Van Arsdall: Yeah. Then this blonde haired lady, she came out and seen me walking up and down the hall.

McGinty: She came out of where?

Van Arsdall: Fleetwood's apartment. I believe she wanted to see Danny or something but I told her he was asleep but she went to the door and opened it up.

McGinty: She went to the door and opened it up. Where were you then?

[13] Van Arsdall: I was standing right there behind her. I was ready to go back in. I was feeling better then.

McGinty: Then what did you do?

Van Arsdall: Started to get sick again. That's when I went in to see what I could do for her and had a time getting the blonde haired woman to calm down.

McGinty: What was she doing?

Van Arsdall: She was getting hysterical.

McGinty: You went in to see what you could do for her and then what?

Van Arsdall: That's when I got the blood all over me. I come back out and the blonde haired lady, she was still hysterical. I was trying to keep her calm. Trying to get Bobby Fleetwood up but he wouldn't get up.

Bowers: Why were you trying to get him up for?

Van Arsdall: She wanted him up.

McGinty: Were you in Fleetwood's apartment then?

Van Arsdall: Yeah at the time.

Bowers: How did you know it was Fleetwood laying on the sofa?

Van Arsdall: Because I went to school with him.

Bowers: There was no electric in that apartment. It had to be totally dark.

Van Arsdall: Not really. He had the shades open and the lights from the street were shining on the sofa.

Bowers: Who else was in the apartment when you went in?

Van Arsdall: Just Fleetwood and that lady that I know of.

Bowers: Wasn't there more than that?

McGinty: There wasn't another fellow in there? Another guy in there?

[14] Van Arsdall: That might have been the guy in the hall that I hollered for the police?

McGinty: Let's stay within Fleetwood's apartment for now. You were in there. Were you trying to get Fleetwood up or was she trying to get him up?

Van Arsdall: We were both trying to get him up.

McGinty: Both trying to get him up. Did you get him up?

Van Arsdall: No.

McGinty: What did you do then?

Van Arsdall: We just waited for the police to come down.

McGinty. Where did you wait?

Van Arsdall: Right there by the door of Bobby Fleetwood's apartment.

Bowers: Did you use the bathroom in Fleetwood's apartment?

Van Arsdall: No.

McGinty: Did you have a knife?

Van Arsdall: No.

Bowers: You haven't had a knife in your hands this evening?

Van Arsdall: No.

McGinty: You didn't wash up in Fleetwood's apartment?

Van Arsdall: I washed my hands after I got done checking that lady out.

Bowers: Where did you wash your hands?

Van Arsdall: In the sink.

Bowers: Where was that?

Van Arsdall: In the kitchen.

Bowers: You didn't use the bathroom?

[15] Van Arsdall: No.

Bowers: Why didn't you use the bathroom?

Van Arsdall: That was the closest one.

Bowers: Did you wipe your hands on you after you had the blood on your hands? Did you wipe the blood on your clothing?

Van Arsdall: I might have, I don't know.

McGinty: What would you say if I told you that witnesses stated that you came into the apartment with a knife in your hands?

Van Arsdall: I don't know what to say, I don't remember anything.

McGinty: You don't remember?

Van Arsdall: No.

McGinty: Is it possible that you had the knife?

Van Arsdall: I'm just saying I do not remember having the knife or saying anything to anybody about a fight.

McGinty: That other subject who was in Fleetwood's apartment, he didn't take you to the window to see if your hands were cut?

Van Arsdall: Not that I remember.

McGinty: Is it possible?

Van Arsdall: I am saying, not that I can remember.

Bowers: Now you aren't too sure about everything. Before you said you were sure and now you don't remember. What is the reasoning for that?

Van Arsdall: I just want to go home, get something to eat, get in a nice warm bed and get some rest.

Bowers: Are you saying that's your reasoning for not remembering?

Van Arsdall: No, because I don't remember.

Bowers: But you were remembering everything else so well.

Van Arsdall: I remember parts of it, parts.

[16] Bowers: You are saying there are parts that you have forgotten that happened this morning?

Van Arsdall: It might have happened or it might not. I don't know.

Bowers: But you are saying you don't remember everything that happened, correct?

Van Arsdall: I don't remember everything that happened.

Bowers: So therefore, something, you could have killed this woman and not remembered it, correct?

Van Arsdall: I am not saying that. I wouldn't kill nobody.

McGinty: Did you kill this woman?

Van Arsdall: No sir, I did not.

Bowers: How do you know? You just said you don't remember everything that happened to you.

Van Arsdall: Man, I don't believe this.

McGinty: In your statement, you stated that, to the best of your knowledge, the only ones in the apartment were you, Danny and this subject that was in bed that you couldn't identify?

Van Arsdall: Yes, he, she whatever.

Bowers: Who was it that got killed?

Van Arsdall: I believe it was the lady I saw earlier in there, I'm not sure.

Bowers: Was it the same lady who was in bed asleep?

Van Arsdall: I don't know. I couldn't see who it was.

Bowers: Doesn't Danny have lights in his apartment?

Van Arsdall: Yeah, but he had them off.

[17] Bowers: You mean it was that dark in there, or that light that you could see the cushions and where everything were?

Van Arsdall: I could see where the cushions were, but I couldn't make out the face of the person.

Bowers: Was the person dressed or unclothed or what?

Van Arsdall: She was under the covers.

Bowers: She was under the covers?

Van Arsdall: He or she.

Bowers: How do you know she was under the covers?

Van Arsdall: Because she had blankets over her.

Bowers: You said you couldn't see that well.

Van Arsdall: I couldn't see her face.

Bowers: Did you try to see who it was? You didn't ask Danny who it was?

Van Arsdall: I didn't bother to ask him.

Bowers: Why not?

Van Arsdall: Because I lived with Danny before.

Bowers: When a man has a person in bed with him, you are not going to question him about who it is in bed with him?

Van Arsdall: No I didn't.

Bowers: You just don't intrude anywhere?

Van Arsdall: I don't intrude.

Bowers: You said you were in the bed, or the floor or on the cushions?

Van Arsdall: He said it was all right for me to sleep there.

Bowers: You didn't care who was in bed?

Van Arsdall: Right, All I wanted to do was get some rest.

McGinty: When you got up, after you woke up and you were going out in the hall to get some air, did you see anything then?

[18] Van Arsdall: No.

McGinty: Did you look?

Van Arsdall: Not really. I was just walking up and down the hall.

Bowers: How long were you in the hall, five minutes, ten, fifteen?

Van Arsdall: I really don't know.

Bowers: You didn't hear any noises while you were in the hall?

Van Arsdall: Nothing I could really say I could hear. I thought I heard something once but I couldn't be sure.

McGinty: What do you think you heard?

Van Arsdall: Just a noise.

Bowers: Like what?

Van Arsdall: Just a noise, that is all.

McGinty: What type of noise?

Van Arsdall: Faint and noisy.

Bowers: Did it sound like someone needed help?

Van Arsdall: It was faint. I could hardly make it out.

Bowers: So you didn't care where it came from?

Van Arsdall: I couldn't tell which direction it came from. I didn't know if it came from the bottom of the stairs, back the hall or what.

Bowers: You said you were in the hall by yourself, the doors to the apartments were closed?

Van Arsdall: Yes and the lady came out and seen me walking and said she heard a noise.

Bowers: I'm talking about when you heard the noise, you couldn't tell where it came from?

[19] Van Arsdall: No.

Bowers: In the hall, it would have been distinct, wouldn't it have? By the doors being closed to the apartments?

Van Arsdall: I was near the stairway at the time. I thought I heard the noise but I am not sure what.

Bowers: What did the lady say to you when she came out of the apartment? You just stated that she said she heard something. What did she say?

Van Arsdall: I don't remember what she said. But she knew Danny. I believe I seen her earlier that night, so she knew me.

Bowers: She knew you? Where would she know you from?

Van Arsdall: I was over to Fleetwood's earlier. Supposedly that is Fleetwood's old lady, I don't know.

Bowers: How did you find that out?

Van Arsdall: Well, he told me. He said that's my old lady.

Bowers: You told me when you saw Fleetwood, he was asleep on the sofa.

Van Arsdall: No earlier.

Bowers: You mean you were there earlier around 4:30?

Van Arsdall: Yeah.

Bowers: She was there then?

Van Arsdall: Yeah, she was there then, I seen her—unintelligible—.

Bowers: Was she the only lady you saw there?

Van Arsdall: I went over there to Fleetwood's apartment. I believe she was at Danny's earlier, but I couldn't swear to it. I'm confused.

Bowers: How many women did you see there?

[20] Van Arsdall: A blonde haired lady and an old woman.

Bowers: Isn't it true that you tried to rape that old woman?

Van Arsdall: No, I did not such thing.

Bowers: Then what caused her to get upset with you?

Van Arsdall: She didn't get upset with me that night.

Bowers: You and her got into a fight and apparently you killed her.

Van Arsdall: I did not get in a fight or argue.

Bowers: You just killed her.

Van Arsdall: And I did not kill her.

Bowers: How do you know you didn't get in a fight? You just stated you didn't remember everything that happened?

Van Arsdall: You guys are trying to confuse me.

Bowers: We aren't trying to confuse you.

Van Arsdall: The Hell you ain't.

Bowers: We're asking you questions.

Van Arsdall: Bullshit.

Bowers: We're asking you questions.

Van Arsdall: You're trying to confuse me.

Bowers: We're not trying to confuse you.

Van Arsdall: The Hell you ain't.

Bowers: If you are telling the truth, you can't be confused and I don't believe you're telling

Van Arsdall: I know myself. I would not strike the lady at all.

Bowers: You would not strike a lady?

Van Arsdall: No I wouldn't. Even if I was drunk, I would not strike a lady.

[21] Bowers: How do you know what you would do if you were drunk?

Van Arsdall: Because I know myself.

Bowers: You said a few minutes ago you don't remember everything that happened. So therefore that could be telling that you could strike a lady because you don't remember everything that happens.

Van Arsdall: I know myself. I know I would not strike a lady.

Bowers: You're saying you don't think you would strike a lady. If you can't remember everything that happened then you don't know what you're going to do.

Van Arsdall: You're trying to confuse me again.

Bowers: I'm not trying to confuse you.

Van Arsdall: Bullshit.

Bowers: I'm just stating what you said.

Van Arsdall: I just want to go home man. Shit.

Bowers: You're not going home Robert because you're being charged with Murder.

Van Arsdall: For what?

Bowers: You're being charged with Murder.

Van Arsdall: You got anything on me?

Bowers: I sure have.

Van Arsdall: What?

Bowers: As of right now, 0729 hours, this statement is being completed. Still present are Chief McGinty, Robert Van Arsdall and Det. Bowers. The date is 01-01-82.

STATE'S EXHIBIT 74, STATE OF DELAWARE v.
ROBERT E. VAN ARSDALL, Crim. Action Nos. IK82-
01-0073, 0074, SUPERIOR COURT OF THE STATE OF
DELAWARE IN AND FOR KENT COUNTY

[1]³ It is now 0743 hours. Present are Det. Bowers and Robert Van Arsdall. We are in an interviewing room at Delaware Correctional Center. This is in reference to a homicide that occurred 01-01-82. [Miranda warnings and waiver deleted.]

Bowers: Do you still wish to give a statement?

Van Arsdall: Yes, sir. The statement I said before wasn't true. I was trying to cover up for my buddy.

Bowers: Cover up for Pregent?

Van Arsdall: Yeah.

Bowers: Okay Robert, go ahead.

Van Arsdall: I was covering up for my buddy when I said that.

Bowers: What do you mean covering up for your buddy?

Van Arsdall: He was the one killed her, I seen him do it.

Bowers: Can you tell me how it happened?

Van Arsdall: It happened a little while, not too long after I got there.

Bowers: About what time was that?

³The transcript is admitted into evidence at Vol. X, pg. 12 of the trial transcript. The actual tape, State's Exhibit 29, was introduced into evidence at Vol. VIII, pg. 9 of the trial transcript.

Van Arsdall: I got there about 11:30. I guess it was about no more than two hours after that.

Bowers: You mentioned your buddy, who was your buddy?

Van Arsdall: Daniel Pregent.

[2] Bowers: Okay, do you want to tell me just what happened?

Van Arsdall: He told me to lay down on the cushions and go to sleep. He got on the fold out couch with Doris what-her-name.

Bowers: Doris Epps.

Van Arsdall: Doris Epps. I was falling off to sleep and the next thing I know he was dragging her past my feet into the kitchen. I got up to see what was going on. He struck me back here and dazed me for a while.

Bowers: Struck you with what?

Van Arsdall: His hand.

Bowers: Struck you back where?

Van Arsdall: Right about in here.

Bowers: Behind your right ear?

Van Arsdall: Somewhere in there.

Bowers: On your neck?

Van Arsdall: Yeah.

Bowers: Then what happened?

Van Arsdall: I finally got back to know what I was doing, he was just

Bowers: He was just what?

Van Arsdall: He had stabbed her twice that I know of and then he started cutting on her.

Bowers: What were you doing all this time?

Van Arsdall: I was on the floor. Then I got up and I tried to pull him off her and he pushed me and I fell down and I fell almost on top of her. That is probably where the hell that damned blood came from. When I fell, my hands just went right where her head was.

Bowers: Then what?

Van Arsdall: I was trying to get back up and he hit me again in the back of the neck. I laid there for a couple of minutes. He came back in from where the sink was. He left the knife in her.

Bowers: Where was the knife at that was in her? What part of her body?

Van Arsdall: He left it down here by the pelvis.

Bowers: The pelvis, meaning the area of the vagina?

[3] Van Arsdall: The pelvis part, down there. Man it was a gory sight.

Bowers: Then what happened?

Van Arsdall: He put his shirt back on and went in and laid down.

Bowers: He didn't have his shirt on?

Van Arsdall: No, he didn't have no shirt on at all.

Bowers: Where did the blood come from in the bathroom?

Van Arsdall: Bathroom? I think he went to the bathroom. I am not sure if he did or not.

Bowers: You think he did?

Van Arsdall: Yeah, like I say, I was stunned for a few minutes. I don't know where he went to.

Bowers: Did he have blood all over him or what?

Van Arsdall: He had it on his chest and his arms but evidently he washed it off because he didn't have no blood on him when he put his shirt back on.

Bowers: Then how did you end up with the knife?

Van Arsdall: Some kind of crazy shit going through my head. I picked up the knife and went across the hall. They asked me what was happening and I just said I had got in a fight.

Bowers: You mean you didn't help him do any cutting at all?

Van Arsdall: No I didn't. I just took the knife out of her and went across the hall.

Bowers: What made you take the knife out of her?

Van Arsdall: I really don't know, I should have just left it there.

Bowers: So when you got back to the bed?

Van Arsdall: I just stayed there until the police got there.

Bowers: How long had it happened before the police got there?

Van Arsdall: I would say about five to ten minutes.

[4] Bowers: Why did he cut her? Why did he kill her?

Van Arsdall: I've got no idea.

Bowers: Did they have sex that night?

Van Arsdall: I heard them move around in the bed. I figured that's what they were doing.

Bowers: Did she have her clothes off at all that you know of?

Van Arsdall: She had no clothes on at all except for

Bowers: I mean when she was in the bed.

Van Arsdall: I couldn't tell. She had the covers on top of her when I laid down.

Bowers: But you did hear some noises from the bed? What kind of noises?

Van Arsdall: Like moaning and the bed squeaking. I heard heavy breathing too. I figured he was just getting a piece.

Bowers: That didn't bother you? You didn't want a piece either?

Van Arsdall: No, I was too damned tired.

Bowers: You just laid there?

Van Arsdall: Yeah.

Bowers: You didn't get excited by all the activity?

Van Arsdall: No.

Bowers: After all the moaning and groaning and so forth and heavy breathing, what did you do?

Van Arsdall: I fell off to sleep because I was tired.

Bowers: Do you know whether or not Danny has ever been in Maryland before? Has he ever committed any act that you know of?

Van Arsdall: Not that I know of sir. I really haven't known him that long.

Bowers: He said that you knew him for quite some time.

Van Arsdall: See it's been, I'd call that quite long, maybe 4 years, ever since I moved into Kentwoods.

Bowers: Has he ever lived in Maryland at all?

Van Arsdall: Not that I know of sir.

Bowers: He ever frequent the beaches down in Maryland or anything? That area that you know of?

[5] Van Arsdall: I never knew him to go to the beaches. If he did, he never told me.

Bowers: Is there anything else you want to say?

Van Arsdall: No sir.

Bowers: It is now 0752 hours. The date is 01-03-82.

STATE'S EXHIBIT 75, STATE OF DELAWARE v.
ROBERT E. VAN ARSDALL, Crim. Action Nos. IK82-
01-0073, 0074, SUPERIOR COURT OF THE STATE OF
DELAWARE IN AND FOR KENT COUNTY

[1]⁴ The time is 0904 hours. I am Detective Carlton Bowers of the Smyrna Police Department. Present is Chief Donald McGinty of the Smyrna Police Department and Daniel Pregent. This is in reference to a homicide that occurred on 01-01-82. [Miranda warnings and waiver deleted.]

Bowers: Why don't you start off telling us what happened from the time your party started.

Pregent: Everything was running pretty smooth. I do understand this was Doris.

Bowers: Correct. What time did your party start?

Pregent: It started early, about 4:00. It was pretty early.

Bowers: 4:00 p.m., December 31, 1981?

Pregent: 4:00 in the afternoon yesterday. What was yesterday? Today is the 1st? It started early and everything, as far as I know, with a few minor exceptions, was running pretty smooth. The subject was passed out on the couch.

Bowers: When you say "subject" you are talking about Doris?

⁴The transcript is admitted into evidence at Vol. X, pg. 12-13 of the trial transcript. The actual tape, State's Exhibit 30, was introduced into evidence at Vol. VIII, pg. 11 of the trial transcript.

Pregent: Yes, she passed out on the couch and I picked her up, folded the couch out and set her back on it.

[2] Bowers: Did she wake up during this time?

Pregent: No, she was pretty well out of it.

Bowers: From what?

Pregent: From drinking

Bowers: Had she been doing anything else?

Pregent: No, she doesn't.

Bowers: Doesn't what?

Pregent: She was far out, but she didn't smoke at all. I don't think she even does, she might. And then, I laid down beside her and I got some sleep, or was trying to get some sleep and that is all I can remember clearly. I was drinking too. The next thing I know, somebody was waking me up and I am out in the hallway and I am handcuffed, just outside the door. I just happened to be involved by Vanarsdale, the guy who was arrested with me. And I happened to look in and got a partial view of what happened for the first time and that is how I know what we are dealing with. It was the first time I saw it. I went to sleep and I didn't wake up to do anything like that.

McGinty: You say a partial view, partial view of what?

Pregent: Partial view of the body with blood all over it sitting in my kitchen. It would have been right about in front of my counter. I didn't see that until I was cuffed, then I saw it.

Bowers: Daniel, tell me something. Was Doris wearing any clothing when she went to sleep?

Pregent: Yes, she had all her clothes on and no attempts at all by me to take them off.

Bowers: Did this include her shoes?

Pregent: No, she didn't have her shoes on. Her shoes were off, sorry.

[3] Bowers: Was she covered up when she was laying down?

Preegnt: Yes, I remember the yellow blanket was the electric blanket or a blue blanket, but she was covered.

Bowers: Were you covered up when you were laying down beside her?

Pregent: Yes, I was.

Bowers: What did you have on?

Pregent: I had all my clothes on and the blanket.

Bowers: Did you have on what you have on now?

Pregent: Yes

Bowers: What time did Vanarsdale get to the apartment?

Pregent: He got there probably 7 or 8.

Bowers: Did he leave at all once he got there that you know of?

Pregent: He might have.

Bowers: You say he might have, would you elaborate on that?

Pregent: He was there for the duration so I can't say whether he did leave or he didn't.

McGinty: He was there for the duration—of what?

Pregent: The Party, until the time everyone went to sleep. He was sleeping there too.

McGinty: You said everybody—give me names.

Pregent: There was Bobby Fleetwood. Janie (I am not sure of her last name) and Ida Mae. Those were the ladies. Bobby Vanarsdale, myself, Mr. Fleetwood and Robert Crain. Those were all the names. There was two people who came to the party that I don't know the names of but they are friends of Crains.

Bowers: Were they black or white?

Pregent: They were black

Bowers: Male or female?

Pregent: Male. This was early and they stayed for a while and then they [4] left. I am not clear on their names.

McGinty: At the time you went to sleep, who was in the apartment?

Pregent: Myself, Doris and Robert Vanarsdale.

Bowers: How well do you know Robert?

Pregent: I have known him for a couple of years. I used to have a trailer down in Dover. I used to live in Kentwoods and that is where I knew him. He helped me share expenses on this trailer and he was staying with me then when we lived on Little Creek Road at Rays Rental. I figured I knew him pretty well.

Bowers: When you went to sleep, did you wake up at all?

Pregent: I think I did get up once and go next door to where Fleetwood was at and the thing is, when I came back everything was still fine.

Bowers: Why did you go to Fleetwood's apartment?

Pregent: Well, I just wasn't able to sleep just then and they had gone and come back so I heard them when they came back and I got up and went over there.

McGinty: When you got up and went to the Fleetwood apartment, who was left in your apartment?

Pregent: I left Doris—it was only for a short time—and Bobby was there and when I came back, everything was still okay.

McGinty: Bobby who?

Pregent: Bobby Vanarsdale.

McGinty: Bobby Vanarsdale and Doris was there?

Pregent: I think so.

Bowers: What do you mean you think so?

Pregent: I was practically in shock. These memories aren't coming back exactly as clear as I would like them to be myself.

McGinty: You left your apartment and went over to Fleetwood's and you returned to your apartment. Who was there?

[5] Pregent: Robert and Doris was still there and she was just laying on the couch and hadn't been disturbed.

Bowers: Where was Vanarsdale when you came back?

Pregent: He was still up and walking around.

Bowers: Was he up and walking around when you left?

Pregent: Yes, and he was still up and walking around when I got back. As a matter of fact, I can't even tell you That is how unclear it was.

Bowers: Had he been drinking?

Pregent: Yes, he had been drinking but he was behaving himself.

Bowers: When you left was he drinking?

Pregent: Yes—well he had been drinking a little bit all night.

Bowers: I am talking about when you got up and went to Fleetwood's—was he drinking at that time?

Pregent: Yes

Bowers: Was he drinking when you returned?

Pregent: Yes he was.

Bowers: Where was he in the apartment when you returned?

Pregent: I think it was in the living room or in the bedroom, whichever.

Bowers: Where was he when you left?

Pregent: I would think it was in the bedroom but I can't say which room he was in. I remember getting up

and going to see these people next door. Janie came in and Bob came in.

McGinty: Came in where?

Pregent: Came up the stairs you know and I heard them in the hallway and I went out and met them and that was about the extent of my leaving the apartment.

McGinty: When you went out in the hall, you said Janie and Bob. Bob who?

[6] Pregent: Bob Fleetwood

McGinty: Where did you go then?

Pregent: I stopped in the apartment to say hello for a little bit but I didn't stay long. I came right back.

Bowers: What do you call long? Approximately how long?

Pregent: Maybe 5 minutes. That was late, that was just before I went to sleep.

Bowers: When you got back to the apartment, prior to your going to sleep, where was Vanarsdale?

Pregent: He was in the apartment.

Bowers: Whereabouts in the apartment?

Pregent: I can't be more specific than he was in there because he was still awake, he wasn't sleeping.

Bowers: Was there any lights on in the bedroom?

Pregent: Actually, when I laid down, I turned the lights off but the lights were on in the kitchen.

McGinty: You remember turning the lights off but you don't remember which room Vanarsdale was in?

Pregent: In the same room as myself from everything I can remember. He just stretched out on some cushions. I thought that's what it was.

McGinty: Did you have any conversation with him when you were in the room?

Pregent: We had some, we go back a couple of years you know. Long time no see, how you doing, I didn't expect to see you up here in Smyrna.

McGinty: Did you have any conversation reference to the partner you had in bed—Doris?

Pregent: I don't believe we talked about that.

McGinty: You don't believe, don't you know?

[7] Pregent: I can't say for sure.

McGinty: In other words, you could have?

Pregent: I could have but it doesn't seem all that likely. I might have explained who she was but as far as...

McGinty: Did he ask you who she was?

Pregent: I don't believe he did.

Bowers: You just volunteered that information?

Pregent: I might have but I am not sure I said anything.

McGinty: Did he know who she was?

Pregent: No, he didn't. The lady—I just met her the same day. She came up to look at the apartment. Bobby Fleetwood is going to be leaving and she had been talking to the landlord and everything and I said you

know, if you can come up with the full amount of the deposit and the first full month's rent in advance, the only problem will be with hot water and cooking gas. I said look, I will help you out. You can come over here to cook or get hot water when you need it, any time you need it. I said I am just neighborly. That is the best I can do, you know.

McGinty: Prior to that, you had never met Doris?

Pregent: Prior to that I have never met Doris.

McGinty: And all of a sudden, you just ended up in bed with her?

Pregent: No, she passed out on the couch. I was drunk and I was lonely and I just felt like maybe sleeping next to somebody warm and I wasn't trying to do nothing.

McGinty: What do you mean you wasn't trying to do nothing?

Pregent: I wasn't trying to do nothing except laying down to go to sleep.

Bowers: You mean you had a woman next to you who was intoxicated and not responsible and you didn't try to take advantage of her?

Pregent: No

Bowers: You didn't touch any organ on her body or anything?

[8] Pregent: I think I put my arm around her.

Bowers: When did Vanarsdale meet Doris?

Pregent: Last Night

Bowers: He actually met her to say something to her?

Pregent: She passed out early, she zonked out. She had been drinking quite a bit.

Bowers: He didn't meet her to talk to her?

Pregent: He did meet her to talk to her. She was cooking spaghetti when Bob came in.

Bowers: She was in the kitchen cooking?

Pregent: Yes, she was in the kitchen cooking.

Bowers: Were there any words between the two while he was there?

Pregent: Not that I know about.

McGinty: You were in the room with them at all times?

Pregent: Not all times, no, I couldn't say that they didn't.

Bowers: On the relationship between you and Doris on the bed, what position were you in the bed, whereabouts on the bed were you?

Pregent: Towards the right side closest to the door stretched out lengthwise.

Bowers: You was closer to the door?

Pregent: I was closer to the door.

Bowers: She was farther from the door, between you and the windows?

Pregent: Yes.

Bowers: Where were the cushions?

Pregent: I took them off. They probably were on the left hand side but they might have been on the right hand side. As I recall, I said something to Robert Vansardale about stretching out on the cushions but I am not sure if I got them stretched out for him or not.

[9] Bowers: Did you feel any movement when you were asleep in the bed as if somebody was moving across you or getting out of the bed?

Pregent: No

Bowers: Did you hear any noises while you were asleep that awakened you?

Pregent: Maybe I did drink too much but I was asleep and after that . . .

McGinty: You said earlier in your statement you laid down and you couldn't sleep and you got up and went over to Fleetwood's apartment and you returned to your apartment.

Pregent: I wasn't gone 5 minutes.

McGinty: Okay, did you go back to bed?

Pregent: Yes.

McGinty: Approximately what time was that?

Pregent: I really don't know. It could have been a wide range of hours. I didn't look at the clock.

Bowers: Isn't it true that you and Vanarsdale sexually assaulted Doris and she resisted and in return she was cut?

Pregent: No.

McGinty: How do you explain the blood stains on your pants?

Pregent: It is the first time I have seen them. I can't explain it.

McGinty: You said that you observed the body in the kitchen when you were picked up.

Pregent: When I was picked up. There's got to be blood stains. That is the first that I remember seeing this.

McGinty: You are telling me that this woman was laying on the other side of you in the bed.

Pregent: I was asleep. When I got woken up that is when I saw it. I had passed out.

McGinty: Saw what?

[10] Pregent: I saw an arm and a leg, a partial view. I didn't even see the rest of it. I saw an arm and a leg and a pool of red.

Bowers: You tell me that you didn't notice any blood in the bedroom?

Pregent: No, I didn't, not when I woke up. I didn't notice anything. I remember all of a sudden there was cops and I was being handcuffed in the hallway and I couldn't understand why. And I turned around and managed to look in the kitchen and I could see why and I didn't even see the whole body, just an arm and a leg and it didn't even look like a black woman, it looked like a white woman.

Bowers: You have a problem with remembering—is it possible that you would have committed the act of murder and not remember it as a result of your liquor and drugs?

Pregent: The only drug that I would have done, I smoked a little bit of pot and if I had done this, in the first place, I would have found blood on more than just my pants. These are the same clothes I have been wearing all night.

McGinty: What would you say if I told you that the sink in the bathroom was running? Was it possible that you went in there and washed up?

Pregent: The cold water in there doesn't quite shut off anyway. Do you mean "running" or just . . .

Bowers: Running.

Pregent: Well, if I did, it still wouldn't have been washed out of my shirt.

McGinty: Is that the only shirt you own?

Pregent: No, but it is the one I was wearing all night.

Bowers: Pull up your sleeves, both of them. What type of kitchen knives do you have in your house?

Pregent: Two long ones. One has a brown handle and one has a black handle. One has a serrated edge and the other a straight one.

[11] Bowers: Which one has a serrated edge?

Pregent: The one with the brown handle. It is a butcher knife maybe a foot long. Both are about the same length?

Bowers: Where is this knife usually kept?

Pregent: Usually in the room that has the kitchen sink.

Bowers: The one where the body was found or the back room?

Pregent: In the back room

Bowers: Where is the other one kept?

Pregent: Either in the drawer or in the same place in the back room by the sink.

Bowers: What drawer, in which room?

Pregent: The drawer all the way to the left hand side.

Bowers: In which room?

Pregent: Kitchen itself.

Bowers: Next to the counter on the wall, next to the refrigerator?

Pregent: That is the one, left hand side facing it.

Bowers: Was that knife out for any reason this evening?

Pregent: Yes, there was some cooking going on tonight, spaghetti and everything else and the knife was out.

McGinty: What knife?

Pregent: I believe it was the one with the serrated edge but I could not be positive.

Bowers: Why did you say that knife?

Pregent: I believe they were both out because of the spaghetti. [Omission in original.] back to his apartment and that was earlier in the day, 4:00 and I had spaghetti on cooking waiting for Doris to come back because I had said, Hey, you come on over. You know, I had all this stuff cooking, spaghetti and all, and we will have a New

Year party and everything so I went [12] to get the makings and I saw Vanarsdale on the street and I told him to come on up and then I went back to the place and the spaghetti was all stuck together and I took one of them to break the spaghetti up. So they were used for cooking and I couldn't tell you which one was out and which one wasn't.

McGinty: You said a few minutes ago it was the one with the serrated edge.

Pregent: I think it was the one with the serrated edge but I couldn't be positive.

Bowers: Did you use that knife on Doris?

Pregent: No.

Bowers: You and Doris didn't have any confrontations of any kind?

Pregent: No

Bowers: You didn't try to assault her and she resisted?

Pregent: No

McGinty: How about Vanarsdale?

Pregent: I don't know.

McGinty: You mean to tell me that you were laying in bed and apparently the victim's body was drug over you and you have no knowledge of it?

Pregent: That is correct.

McGinty: Can you explain the blood on your pants? You stated that you were covered up with a blanket.

Pregent: To the best of my knowledge I was.

McGinty: To the best of your knowledge, but you don't know, do you?

Pregent: I remember up to the point of going to sleep, but I had been drinking quite a bit all night. When I went to sleep for the duration, I was out of it.

McGinty: Isn't it possible that you weren't asleep all that time? Isn't it possible that you assisted, if not committed, this crime?

EXCERPTS OF TRIAL TRANSCRIPT,
 STATE OF DELAWARE v.
 ROBERT E. VAN ARSDALL, Crim. Action Nos. IK82-
 01-0073, 0074, SUPERIOR COURT OF THE
 STATE OF DELAWARE IN AND FOR
 KENT COUNTY

*Opening Argument of John R. Williams,
 Attorney for Robert E. Van Arsdall*
 Volume II at 28-33, 38-42

* * *

[28] I submit to you that the evidence in this case will show that Daniel Pregent's second floor apartment as it appeared during the early morning hours of January 1, 1982, was a shocking and frightening scene as human beings, the individuals who were present or who observed this bloody scene and the naked, mutilated body of Doris Epps may also have been frightened and shocked. I submit to you that such a horrible scene would repulse any normal individual and that factor should also be considered by you in evaluating the thoughtfulness and reliability of the testimony of individuals who were witnesses at such a scene.

Perhaps most importantly it is essential for you to examine any potential bias, interest or ulterior motive of a witness in rendering his or her testimony. That is, you ought to consider whether or not there is any reason for a witness to testify in one fashion or another in this case.

As jurors you must maintain an open mind throughout the trial. Do not make up your minds until both sides have had an opportunity to present their witnesses and all of the evidence is before you. Normally [29] there are two sides to every story. If you make up your mind after only the prosecution has presented its case, you will be making a one-sided determination. You are required to reserve your decision as to the innocence or guilt of Bobby VanArdsall until all of the evidence and testimony has been presented.

Not only must you keep an open mind throughout this trial and carefully evaluate the testimony of each witness, but you should listen for what the witnesses do not say. What I mean by this is that the witnesses which the State will present will testify to certain facts which honestly are not in dispute.

There is little doubt, for example, that Doris Epps died sometime on December 31, 1981, or January 1, 1982, and that her body was found in the kitchen of Daniel Pregent's apartment in Smyrna, Delaware. The fact that the body of Doris Epps also suffered certain injuries or wounds is not a matter which is denied. What is in dispute is how the death of Doris Epps occurred or, more particularly, who caused the death of Doris Epps.

When I say you should listen for what the witnesses do not say, I am attempting to alert you to the fact that

each of the witnesses who will testify on behalf [30] of the State has only a limited perspective in this matter. All of the police officers that will appear as witnesses in this case did not arrive on the scene until after Doris Epps was dead. Furthermore, I submit to you that none of the other witnesses which the State will produce is able to testify that he or she actually viewed the killing of Doris Epps.

The reason for this is there are only three individuals who know what occurred in Daniel Pregent's apartment at the crucial time: Doris Epps who is now deceased, Daniel Pregent who as Mr. Reed informed you will be tried at a later date for this same offense, and Robert VanArasdall the individual on trial here today. All of the individuals who will testify on behalf of the State will, therefore, be relating only what is known as circumstantial evidence. It is true that some of the circumstantial evidence may be highly suspicious in nature, but it is still only circumstantial evidence. It is essential that you attempt to keep in mind which evidence in this case is only circumstantial in nature and which evidence directly concerns the crucial facts at issue.

The prosecutor assigned to this case has a job to do. His job is to convict Bobby VanArasdall of the [31] crime of first degree murder. The prosecutor is only doing his job when he produces witnesses and offers evidence on behalf of the State.

The individual who is the focus of this proceeding is the young man who is seated at defense counsel table. It is certainly no mystery who is on trial. Anyone who has attended a court proceeding or seen a trial on television knows that the defendant sits beside his lawyers. Now, some of the witnesses who testify in this case on behalf

of the State also know this fact. When those witnesses come to court, they may even be asked if they can identify Mr. VanArasdall and they may look around and they may even point to Bobby. To simplify matters, I will tell you right now that this (indicating) is Bobby VanArasdall the young man who is on trial before you.

Not only do you know who is on trial in this case, but you should know another thing that is of great importance. You should know that as Bobby VanArasdall sits before you today without any evidence having been produced that he is innocent. In fact, there is a presumption that he is innocent. Unless and until the State has proved to your satisfaction by proof beyond a reasonable doubt each and every element of the offenses charged, Bobby VanArasdall [32] cannot be found guilty of any criminal conduct. He is presumed innocent and he must be proven guilty.

The purpose of an opening statement such as this is for the lawyers to let you know what they intend to prove. Of course, Bobby VanArasdall does not have to prove a thing. He is presumed innocent and the prosecution must carry the burden of proving him guilty beyond a reasonable doubt; however, we do intend to show you as this trial progresses that what the prosecutor has said is not necessarily the way things happened.

Although we do not have to prove a thing, we will nevertheless prove to you that there are substantial reasonable doubts. We will prove that the State has not met its burden of proof. We will prove that insufficient evidence has been produced to meet this heavy burden of proof and finally we will prove that Bobby VanArasdall is innocent of the two accusations brought against him.

There is no obligation on Bobby VanArdsall's part to prove anything. The entire burden of proving guilt beyond a reasonable doubt as to each element of each offense rests upon the prosecution. Nevertheless, ladies and gentlemen, we intend to prove to you that the prosecutor has failed to meet this burden. We intend to prove [33] to your satisfaction through the mouth of the accused himself that he is innocent of this crime. He will take the witness stand and explain to you why he is innocent. Bobby VanArdsall will also tell you who did commit this crime.

We intend to prove through the direct testimony of a witness who actually observed what occurred that Daniel Pregent was the one who murdered Doris Epps. Daniel Pregent is not on trial here today. Daniel Pregent will be tried however on these exact same charges at a later date. Please remember that Daniel Pregent is also charged with the first degree murder of Doris Epps.

The burden of proof, as I have said, is entirely upon the State. The degree of proof necessary to establish guilt is what is known as proof beyond a reasonable doubt. Proof beyond a reasonable doubt does not mean proof beyond all doubt, but it is more than simply proof by a preponderance of the evidence.

* * *

[38]

* * *

Ladies and gentlemen, I submit to you that no thorough police investigation in a case such as this could be concluded within nineteen minutes such that two individuals could with any real certainty be arrested for an offense as serious as first degree murder. Just to give you an idea of how short a time nineteen minutes is, I checked the time when I began this opening statement. That was at 11:30. The time now is after 12:00 o'clock. We intend to prove that such a hasty investigation by the police in this case resulted in the arrest of an innocent young man who had the misfortune to be in the wrong place at the wrong time. Throughout the testimony you should keep in mind that the police think they solved this homicide supposedly involving multiple defendants in only nineteen minutes.

Before we go any further in this case, there is a matter which in all honesty I must disclose to you. I submit to you that there will be presented as evidence two tape recorded statements. The prosecutor has already referred to those statements which were taken from [39] Robert VanArdsall by the Smyrna police. The first statement occurred at the Smyrna Police Department within hours after the arrest. Bobby VanArdsall in his own testimony from the witness stand will tell you that there are matters contained in that January 1 statement which are simply not true, and he will explain to you why he made such incorrect statements to the police when initially questioned. The January 1 statement I submit indicates a certain confusion by Bobby VanArdsall. You can examine the statement and judge for yourself.

In the statement of January 1, Bobby denies having possession of Danny Pregent's kitchen knife. That is incorrect. We intend to prove that even such possession

however does not mean there was any criminal conduct by this young man.

Secondly, in this January 1 statement Bobby denies knowing how Doris Epps died. This inaccuracy and lack of candor was voluntarily corrected by Bobby when of his own free will and volition on January 3, 1982, he requested to speak with Detective Bowers again so that he could tell him what did occur. We intend to prove that this second statement of January 3 when Bobby told the police that he does know what happened and that he had [40] been trying to protect his friend, his buddy Danny Pregent, is correct.

Thirdly, I submit to you that Bobby's own testimony in this trial will reveal another misstatement in the January 1 recording which denial was made out of fear and embarrassment. What I am referring to here is Bobby's denial in the January 1 statement of any sexual contact earlier in the evening with Doris Epps. That initial denial of sexual conduct was not true. Bobby VanArsdall I submit will quite candidly tell you that he did have voluntary sexual contact with Doris Epps well before Doris Epps suffered any physical injuries at the hands of Daniel Pregent.

What Bobby VanArsdall intends to prove in this case is that Danny Pregent, the other individual charged with the same offenses, killed Doris Epps with a kitchen knife. We intend to prove that this homicide occurred in Danny Pregent's apartment, that Bobby VanArsdall had returned to that apartment late in the evening of December 31, 1981, and entered through a back door of the apartment unseen by anyone except Danny Pregent who admitted him, that Bobby VanArsdall had only met Doris Epps

that evening and that for some reason unknown to Bobby VanArsdall [41] Daniel Pregent repeatedly stabbed and cut the woman.

We further intend to prove that the misfortune and injustice in this case is that Bobby VanArsdall was arrested for a crime he did not commit. Certainly there are suspicious circumstances here. We intend to prove that the blood on Bobby's clothing resulted when he attempted to restrain Danny Pregent and aid Doris Epps. We also intend to prove through Bobby VanArsdall's testimony that he took the bloody kitchen knife across the hall to Robert Fleetwood's apartment where three other people were present rather than leave it with Danny Pregent. I submit to you that simple possession of a knife and even bloody clothing does not make an individual a murderer.

When you examine Bobby VanArsdall's explanation of what occurred at Danny Pregent's apartment on New Year's Eve and the following morning of New Year's Day, there are a number of questions which I submit you must consider in any effort to gain a sincere understanding of this case. The first question is where Bobby VanArsdall and Daniel Pregent were found at the scene. Second, if this homicide occurred in Danny Pregent's apartment and Bobby entered through a back door, why did Mr. VanArsdall not go away, out that same back door rather than go across [42] the hall to a neighbor's apartment while wearing bloody clothes and carrying Danny Pregent's kitchen knife, of all things? The third question which you should consider is why an individual who had just committed a murder would tell anyone else that the crime had taken place?

We intend to prove by Bobby VanArdsall's own testimony that while he was across the hall and in Robert Fleetwood's apartment he candidly told Mrs. Jane Meinier that something was wrong over at Danny Pregent's residence. The fourth and perhaps most important question which should occur to you is whether a knife murder is really the type of fatal assault that is committed by two persons or only one individual. I submit to you that the evidence in this case will show that there was only a single murder weapon: Danny Pregent's kitchen knife. Is it reasonable to conclude that two people took turns stabbing Doris Epps with the same knife? These are at least some of the questions which ought to occur to you as this trial progresses.

Please promise to reserve you final decision however until you have had an opportunity to hear all of the evidence. As each of you promised to reserve your decision in this case, we promise to conduct this defense as honestly, fairly and accurately as we can.

Cross-Examination of Robert S. Crain
Volume II at 108-114

* * *

[108] [Mr. Nicholas, defense counsel] Q. And you left with whom?

A. Excuse me?

Q. Who did you leave with?

A. My little brother, sir.

Q. Did Ida Mae Stevens leave with you?

A. She left around the time that I left, sir.

Q. And at the time you left Mr. VanArdsall was not in the apartment; is that correct?

A. I did not see him, sir.

Q. I would like to get back to the incident you referred to between Mr. Pregent and Ida Mae Stevens. Was that in fact a fight?

A. You mean as far as physical contact, sir?

Q. Yes.

A. I don't believe that Mr. Pregent made any physical contact with Ida Mae, no, sir.

Q. Is the reason why he didn't make any physical contact with her because you had to restrain him physically yourself?

A. Yes, I did. I can't say that is the reason, but I did restrain him.

Q. How did you restrain him?

[109] A. Just held him, grabbed him, sir, around his arms like this (indicating), put a lock on him, sir.

Q. While you were restraining him, didn't he kick a hole in the wall?

A. Yes, sir.

Q. Where was all this happening?

A. In the hallway, sir.

Q. Between the two apartments?

A. Yes, sir.

Q. Did he try to also punch holes in the wall?

A. I couldn't say that. I don't remember that.

Q. How long did this particular incident last between Daniel Pregent and Ida Mae Stevens?

A. Well, I don't know. I heard them fussing earlier, seemed like for about maybe—to me it seemed like fifteen or twenty minutes they were fussing before he got mad.

Q. The two of them?

A. Yes, sir.

Q. Where was all that fussing taking place?

A. I believe it was in his apartment, sir.

Q. In his apartment?

A. Yes, sir.

[110] Q. How did you get involved with it? You are hearing fussing going on for fifteen or twenty minutes. How did you become involved in it?

A. How did I become to be involved in it?

Q. Yes.

A. Well, when it got loud, you know, to the excess that is when me and Mr. Fleetwood walked out in the hall.

Q. Where had you been previous?

A. I was in Mr. Fleetwood's apartment at that time.

Q. So you and Bobby Fleetwood come out into the hall in response to your hearing shouting?

A. Yes, sir.

Q. Did you know who was shouting?

A. Yes, sir.

Q. And then did Pregent and/or Ida Mae Stevens also come out into the hall?

A. Pregent I believe he was in the hall when he was shouting, sir.

Q. Do you know if at anytime he wanted to take Ida Mae Stevens outside?

A. No, sir.

Q. After he got into the hallway, is that the [111] point at which you had to grab him?

A. Yes, when he was in the hallway, sir.

Q. Do you have any idea what this fight was about?

A. No, sir.

Q. You testified that everyone at the party to your knowledge was drinking alcohol; is that correct?

A. Yes.

Q. Does that include Doris Epps?

A. Yes.

Q. Was she drinking heavily?

A. I couldn't say she was drinking heavily because I wasn't paying any attention, sir.

Q. You testified that when you left Danny Pregent's apartment that Doris Epps was lying here (indicating) in the bed and Danny Pregent here (indicating); is that correct?

A. Yes.

Q. How did Doris Epps get into that bed?

A. When she passed out, me and Mr. Pregent laid her there in the bed.

Q. So the two of you laid her in the bed?

A. Yes.

[112] Q. Do you have any idea what time it was that she passed out?

A. No.

Q. How much time would you estimate went by between the time you put her to bed and the time you left?

A. I'd say about half-an-hour, sir.

Q. Before putting her to bed, did you have to unfold that bed?

A. Yes.

Q. Is it a sofa bed?

A. Yes.

Q. Did you unfold it?

A. Yes, me and Mr. Pregent did, sir.

Q. Were there cushions on it, on the sofa?

A. Yes.

Q. Where did you put those?

A. I don't remember, sir.

Q. So if she passed out approximately one half hour before you left, would that be 10:30 to 10:45 p.m. assuming that you left at 11:15?

A. To the best of my knowledge, yes, sir.

Q. How was she dressed when she was put to bed?

A. She was fully clothed, sir.

[113] Q. Was she covered up when you left?

A. I don't know if she had any covers or not, sheet or anything. I don't know.

Q. Were the lights on in the apartment when you left?

A. I believe the light was on in the living room, sir.

Q. In the living room?

A. Yes.

Q. Is this sofa bed in the living room of that apartment?

A. Yes.

Q. Was the radio on?

A. I believe it was, sir.

Q. Where is the radio located in the apartment?

A. In the living room.

Q. In the living room?

A. Yes.

Q. Was it loud?

A. You could hear it. I would say, yeah, it was playing, not too loud but you could hear it.

Q. Mr. Crain, when you left was Doris Epps alive?

A. Yes.

[114] Q. That was the last time you saw her alive?

A. Yes.

Q. Who was she with then?

A. Who was she with?

Q. Yes, the last time you saw her alive.

A. With Pregent.

Q. Could you describe Ida Mae Stevens? How big is she?

A. I'd say she's about five foot five.

Q. Five five. How much do you say she weighs?

A. One twenty-eight.

Q. One twenty-eight?

A. Yes.

MR. NICHOLAS: No further questions.

*Direct and Cross-Examination and Voir Dire
Of Robert J. Fleetwood
Volume III at 40-91*

* * *

DIRECT EXAMINATION

[40] BY MR. REED [prosecutor]:

Q. Good afternoon. Would you state your name one more time, please.

A. Yes. My name is Robert J. Fleetwood.

Q. Mr. Fleetwood, I understand you stutter.

A. Yes, sir.

Q. So as I ask you questions, please take your time in answering the questions. Try to keep your voice as loud as you can so everyone can hear what you have got to say. Where do you live, Mr. Fleetwood?

A. I live now?

Q. Yes.

A. At this present time I live at 130 North Main Street down in—I can't pronounce it.

Q. Smyrna, Delaware?

A. Yes, Smyrna, Delaware.

Q. What was your address on the 31st of December?

[41] A. It was 11 East Commerce Street.

Q. Again in Smyrna?

A. Yeah, Smyrna, Delaware.

Q. Approximately how long had you lived there?

A. I lived there—I lived there two months.

Q. And on the 31st, what was the status of your lease?

A. I was going to be out. I was supposed to be out by the first of the year.

Q. Now, on your floor was there another apartment?

A. Yes, there was.

Q. Basically where was that located?

A. Well, there was this one that was like from over at my apartment. It was, you know—it was almost just like this, but it was off on an angle like.

Q. Basically across from your apartment?

A. Yes.

Q. Is there a hallway separating your apartment?

A. Yes.

Q. On the 31st, who was living in that apartment across from you?

A. This guy named Danny Pregent.

Q. Do you know how long he had lived there?

[42] A. No, not really.

Q. Do you know the defendant in this case Robert VanArsdall?

A. Yes, sir.

Q. Basically how do you know him?

A. I just do know him from that he has been around. He has been around.

Q. Around town?

A. Around town a few times.

Q. Do you see him in the courtroom today?

A. Yes, I do.

Q. Would you point him out, please.

A. Yes, sir, right there (indicating).

Q. You are referring to the defendant?

A. Yes, sir.

Q. Let's go back to the 31st of December. What were you doing on that day for most of the day?

A. Well, I was—I was at home at the time and it was around about 11:30 or maybe about 11:30 or so in the afternoon and I had went over at the store that was just—that was just on the other side of my apartment and I did go to the store and I did get some alcohol from there.

[43] Q. You are talking about 11:30 in the morning?

A. In the afternoon, yeah.

Q. What was the purpose in getting the alcohol?

A. That I was planning on just—I did want to start early in the afternoon because I knew that it was going to be—that there was going to be a—wait a minute.

Q. Take your time.

A. That I was going to celebrate the new year. So I just did start—I just did start early.

Q. Who in all was with you when you initially started?

A. There was this girl named—her name was—her first name is Alice Meinier and there was him over there.

Q. Him meaning?

A. Pregent.

Q. Were you planning a party basically?

A. Yeah.

Q. Again, you said this started around 11:30 or 12:00?

A. Yeah, it was between there.

Q. How long would you say this party lasted?

[44] Well, the only thing—well, it lasted until I did go out, you know, because of the alcohol which it lasted from 11:30 in the afternoon until about—until about five after twelve that night.

Q. Who was there at your party?

A. Well, there was—like I said, there was, there was people in and out, you know. There was—like Alice was there the whole time.

Q. How about Pregent? Was he there basically the whole time?

A. Yes, he was there.

Q. How about Robert Crain?

A. Yes, he was there, too.

Q. Basically the whole time for him?

A. Yeah.

Q. Who are some of the other people that were either there the whole time or in and out?

A. There was this girl named Ida Mae Stevens was there and this other guy named—his first name is Paul something. I forgot his last name.

Q. Paul?

A. Yeah, Paul and there was this other guy there named—his first name—I can't pronounce it. [45] Scotty Burns he was there.

Q. Scotty?

A. Yeah, and there was, as you know there was her there, too.

Q. Her is who?

A. Epps, Miss Epps was there.

Q. When did she first come there that day?

A. She came there—it was like—it was the first thing early, first thing early in the morning.

Q. Was this before you went out and got the liquor?

A. Yes.

Q. What was her purpose in being there then?

A. Well, this guy knew that I had to be out, right, and so he knew I was moving, but this woman that was out hunting for this place to move into and so she did come up to my place and ask me about it.

Q. About moving in your apartment?

A. Yes.

Q. Did she leave at this point?

A. Yeah.

Q. Did she come back later?

A. Yeah. Yes, sir.

Q. Just approximately how many people would you [45(a)] say all told were at your party either that were there the whole time or came and went?

A. At least between nine and eleven, twelve people.

Q. I might have just asked you this. What time did she come back, Mrs. Epps?

A. Miss Epps came back between 4:00 and 4:30.

Q. Was the defendant at your party?

A. No, he wasn't. At that time, he wasn't.

Q. Did he come later?

A. Yes, he did.

Q. At some point did you all have a meal?

A. Yes, we did.

Q. When in relation to when Mrs. Epps was there did you have a meal?

A. Well, she got there around, between, as I said, 4:00 and 4:30 and we all did eat around 4:30.

Q. What was it that you all ate?

A. We ate some meat, pork chops and some other food. I can't pronounce it.

Q. Spaghetti?

A. Yeah. Yes, sir.

Q. What did she do in relation to that meal?

[46] A. She did help with it, you know.

Q. When did Robert VanArsdall come in relation to this meal you had? I take it you only had the one meal?

A. Yeah, that's all we had the one meal.

Q. Where was the meal cooked?

A. Over at his apartment.

Q. Pregent's?

A. Yes, Danny Pregent's apartment.

Q. Where did you eat the meal?

A. We ate at his house.

Q. Would it be fair to say the party was back and forth between both of your apartments?

A. Yeah.

Q. You all were drinking?

A. Yes, sir.

Q. When did VanArsdall come in relation to the meal?

A. I ain't going to say that he was there at the meal.

Q. Do you remember him coming in?

A. Yes, I remember him coming in but I can't say that I can say that that was after the meal.

Q. Do you remember anything that he was wearing at [47] the time?

A. The only thing I remember him wearing was this big army jacket.

Q. Did he stay the rest of the evening after he came?

A. No, he didn't.

Q. Do you remember how long he was there?

A. He came to my apartment and he was only there maybe, maybe at the longest fifteen minutes, at the longest.

Q. Do you remember any other highlights happening, the order they happened that evening?

A. That evening?

Q. Yes, say, after he left, Mr. VanArdall.

A. Well, there was these other people still there. There was a guy named, as you did say, explain his name. His name is Robert Crain was there and he was there with these other people and I left.

Q. What did you leave for?

A. I did go back over at the store because I do think that we was out of alcohol. So I had gone back over for more.

Q. You went back over to the liquor store?

A. Yeah, and I came back and so I did find—I [48] did find my apartment was all, you know, messed up because these guys was up there and they had this argument.

Q. Do you know what guys that was?

A. Yeah, it was Robert Crain, but this other guy I don't know too good.

Q. When you came back and found your apartment messed up, what did you do?

A. I did make everybody leave.

Q. Did anyone arrive at your apartment at that point, around that point?

A. Around that point?

Q. Yes.

A. No, because I ain't able to remember that.

Q. What time was it that you told everybody to kind of leave your apartment?

A. This was around fifteen of ten or 10:30.

Q. Do you remember seeing a Mark Mood at your apartment?

A. Yes, I do.

Q. When did he arrive?

A. He arrived—he arrived just before that happened in my apartment, you know, with them guys getting into the argument.

[49] Q. Did you tell him to leave your apartment?

A. No, I didn't.

Q. Who if anyone was left in your apartment? You said you threw everybody out, let's say, around 10:00 o'clock.

A. Yes.

Q. Who was in your apartment after you in effect threw the rest of the party out?

A. There was Alice and Mark Mood.

Q. What did you all do for the rest of the evening?

A. We just sat there between us three and just sat there and just got more higher on the alcohol.

Q. Did you leave your apartment at any point?

A. Yes, I did.

Q. What time was that about?

A. It was around 11:00. I had gone over there to his apartment.

Q. His is again who?

A. Danny Pregent's apartment, and the door was already open and so I just like walked over there and just like with my head around the corner.

Q. Let me break in a minute. Could it have been later than 11:00?

[50] A. Yeah, it could. Well, all right, yeah, it could have been between 11:00 and 11:30.

Q. You went in and what did you see?

A. I just seen him on the edge of the bed and I seen his feet hanging from the bed.

Q. Whose feet?

A. Danny Pregent's feet hanging from the bed. I mean, that's all I could see was about from here (indicating) down.

Q. What part of the bed would Pregent have been on?

A. He was like on the end of the bed like this-away (indicating), on the end of it.

Q. And you said you saw who else sitting on the bed?

A. Bobby VanArsdall.

Q. Did you see anyone else in the apartment at that point?

A. No, I didn't.

Q. Did you see Doris Epps?

A. No, I didn't.

Q. Can you say whether she was there or not?

A. No.

[51] Q. Could she have been there and you missed her?

A. Yes, sure.

MR. WILLIAMS: Objection Your Honor. That is cumulative. He has already asked that question.

THE COURT: Objection sustained.

BY MR. REED:

Q. I am going to hand you a diagram which has been marked State's Exhibit 2. Would you take a look at this. If I represent to you this is a rough diagram of the bed and there is a figure with his head, a circle indicating his head with a "P" and that is supposed to be Daniel Pregent—

A. Yes.

Q. —is that the area you saw him in?

A. Yeah.

Q. Would you please with a "V" indicate where on this particular bed you saw Robert VanArsdall?

A. Sure.

(The witness marked the diagram.)

MR. REED: I would ask that you hold this up, if there is no objection, and show the jury.

BY MR. REED:

Q. Where were you standing when you had this [52] view?

A. Well before you have to go in his apartment you have to go down one step and I just like had this leg—well, on the one step I had this one foot and as you got to walk in his door it does open up thisaway (indicating). So I had my hand up here like this (indicating) and I just like had my head around the door.

Q. Were you able to get a complete view of the bed?

A. No.

Q. Were the lights on in the room?

A. Yes, there was.

Q. Were the lights on in the kitchen?

A. Yeah.

Q. What was the status of the lighting in your apartment?

A. They was out.

Q. Why was that?

A. Because I had mine off.

Q. After you got this view, did you talk to either of the individuals at this point?

A. No, I didn't.

Q. After you had this view, what did you do?

[53] A. I just did turn around and just went back in my apartment.

Q. Was Alice and Mark still over there?

A. Yes, they was.

Q. What do you remember happening next?

A. Well, that is it. Then about five after twelve I went out you know.

Q. What do you mean you went out?

A. I just did go to—I was on my couch and I just did—I did pass out.

Q. Why do you remember this? How do you know it is five after twelve?

A. Because I could hear the New Year's things going off because every year in town they do ring these bells.

Q. What type of bells is this?

A. It is just bells, you know.

Q. What is the next thing you remember after passing out?

A. I passed out. I remember that girl was beside me. Alice she did reach over here on my cheek and said Happy New Year's and that is it.

Q. And you passed out. I take it you woke up at [54] some point?

A. Yeah, I did.

Q. What do you remember happening at that point?

A. I just did have a whole house full of, you know—I did look at all these cops was in my house.

MR. REED: Thank you. I have no further questions, Robert. Defense may have some questions for you.

CROSS-EXAMINATION

BY MR. NICHOLAS [defense counsel]:

Q. Good afternoon, Mr. Fleetwood.

A. How you doin'?

Q. Mr. Fleetwood, how old are you?

A. Twenty-one.

Q. Were you twenty-one on December 31st of last year?

A. No, I wasn't.

Q. How old were you then?

A. Twenty years.

Q. On the 31st of December, 1981, were you living with anyone at that apartment?

A. No, I wasn't.

Q. You testified that sometime on the morning of the 31st Robert Crain came to your apartment; is that [55] correct?

A. Well, yeah, because he always has been at my apartment, you know. He always has been there, you know.

Q. You know him well?

A. Yes, I do.

Q. What time did he arrive?

A. What time did he arrive?

Q. Yes.

A. That is hard to tell you because he was in and out.

Q. Well, can you approximate what time he arrived in the morning?

A. In the morning?

Q. Did he arrive in the morning?

A. I ain't sure because he always comes and goes, you know. I mean look, it has been awhile since I have, you know, since I have been going through this. So it is going to be a little hard to have this all up in my mind.

Q. I understand that. You testified that the party began at approximately 11:30 to 12:00 o'clock; is that correct?

A. Yes, sir.

Q. Was Robert Crain there before the party started?

[56] A. As I said, he might have been.

Q. So you don't know?

A. No, I don't know that question.

Q. Was Alice Meinier there?

A. Yes she was.

Q. What time did she arrive?

A. Well, she did arrive before 11:30.

Q. When Doris Epps came up to your apartment for the first time, was she with anyone?

A. Yes.

Q. Who was she with?

A. This guy named—his first name is—

Q. Steve?

A. Steve Harris.

Q. Did you know who she was at that time?

A. No, I didn't.

Q. You never met her before that day?

A. No, I hadn't.

Q. You testified that she returned to your apartment between 4:00 and 4:30 p.m.; is that correct?

A. Yeah. Yes, sir.

Q. Was she with anyone at that time?

A. No.

[57] Q. Who was there when she came back in your apartment?

A. That is hard to tell because, as I said, there was people in and out, but I do know I was there and there was Alice was there.

Q. At that time were there also people at Pregent's apartment?

A. Huh?

Q. At that time were there also people in Pregent's apartment?

A. I can't answer that question either.

Q. Did you in fact ask Doris Epps to stay for the party?

A. Yeah, I did.

Q. So she was there at your invitation?

A. Yes, sir.

Q. You testified that sometime after she returned the second time you all had supper together; is that correct?

A. Yes, we did.

Q. And you had supper in Danny Pregent's apartment?

A. Uh-huh (affirmative).

Q. And that is where it was cooked?

[58] A. Yes, sir.

Q. And you had pork chops and spaghetti?

A. Yes, sir.

Q. Where did the pork chops come from?

A. From the store.

Q. Didn't they in fact come from you?

A. Yeah.

Q. From your apartment?

A. Yeah.

Q. Did Alice Meinier take those pork chops over to Danny's apartment?

A. Yeah, because, as I said, I didn't have any on and I did have a stove to where you had to use electricity. So we had to use his.

Q. Was your testimony that Mr. VanArsdall arrived sometime after the meal was eaten; is that correct?

A. Uh-huh (affirmative).

Q. Do you have any idea whether he was with anyone when he came?

A. Yeah, he was.

Q. Who was he with?

A. He was with a guy—he was with a guy named Paul Berghorn.

[59] Q. Paul Berghorn?

A. Uh-huh (affirmative).

Q. Was he also with Scotty Burns?

A. Yeah, I think so.

Q. Anyone else?

A. No, I don't think so.

Q. When he left, did he leave with anyone?

A. Yes, he did leave with Paul and the other guy Scotty Burns.

Q. So he came in with the two of them and left with the two of them?

A. Yes.

Q. And it was your approximation that he was there maybe fifteen minutes?

A. Yes.

Q. During that time was he talking with anyone?

A. I can't answer that question.

Q. You didn't have a chance to observe him?

A. I can't answer that question either because everybody was with everybody. You know what I mean?

Q. Well, was he in Mr. Pregent's apartment and over in yours?

A. He was in mine as far as I know.

[60] Q. Mr. VanArsdall was in your apartment?

A. Yeah.

Q. Was he in Danny Pregent's apartment?

A. Well, after he did leave I didn't know what he did.

Q. So you don't know if he was or not?

A. That is true.

Q. Now, you testified that you were drinking. When did you begin drinking that morning?

A. Between 11:30 and 12:00 o'clock.

Q. What were you drinking?

A. Alcohol.

Q. What kind of alcohol?

A. I can't pronounce it. Liquor.

Q. Hard liquor?

A. Yes, sir.

Q. Did you have a lot to drink?

A. Yes, sir.

Q. Now, between the time—this may be hard for you to estimate—but between the time that Doris Epps arrived and the time you passed out that night, how many times would you say you had gone over to Danny Pregent's apartment?

[61] A. Maybe two.

Q. Maybe two, and that includes when you went over there to eat?

A. No, that don't include that, no.

Q. So it might have been three?

A. Yeah. It was three, yes.

Q. Was Alice Meinier with you the whole time that day?

A. Yes, she was.

Q. Did she eat supper over to Danny's, too?

A. Yes, sir.

Q. So she was with you in Danny Pregent's apartment every time you were there?

A. Huh?

Q. She was with you in Danny Pregent's apartment every time you were there?

A. Yes, she was.

Q. And were the two of you at anytime in the living room of Danny's apartment?

A. I ain't able to answer that question. I do not remember that part.

Q. Do you know if you were in his kitchen?

A. Yes, we was.

[62] Q. Were you in his bathroom?

A. Yes, we was.

Q. Now, it was your testimony that somewhere along the line Ida Mae Stevens showed up; is that correct?

A. Yes.

Q. How long have you known her?

A. I have known her for a very good few years.

Q. So you certainly knew who she was?

A. Uh-huh (affirmative).

Q. Can you estimate when she arrived?

A. No, I can't.

Q. Was it after supper?

A. I don't know that question.

Q. After she arrived, did anything unusual happen involving her and Danny Pregent?

A. Well, they was out in the hallway arguing. That is all I know. There is a hallway that divides his apartment and my apartment, but yet it does add into this other

hallway. So you got to walk through this one doorway to be in his hallway.

Q. So you heard them out in the hallway arguing?

A. Yeah.

Q. Where were you when you heard them?

[63] A. I was in my apartment.

Q. Did you come out of your apartment?

A. Yes, I did.

Q. Were they continuing to have an argument out in the hallway?

A. Yes, they was.

Q. Was there anyone else with you in the hallway?

A. There was him with me. There was Robert with me, Robert Crain.

Q. Did you and Robert Crain have to restrain Danny Pregent?

A. Yes, we did.

Q. Was that because he was threatening to fight or beat Ida Mae Stevens?

A. Yeah.

Q. And in restraining him, did he kick a hole in the wall?

A. Yeah.

Q. You saw that?

A. Yes, I did.

Q. Did he also attempt to punch the walls?

A. Yes, he did.

Q. Had he ever punched on walls before that day to [64] your knowledge?

A. No.

Q. Do you know whether or not Mr. Pregent was involved with the disturbance in your apartment?

A. No, I don't.

Q. You don't know?

A. No, I don't know.

Q. Could he have been?

A. Well, when I did come back he wasn't in my apartment.

Q. Was anyone in there?

A. Yes, there was.

Q. Who?

A. There was Robert Crain and these other guys that he knew.

Q. Sometime that night did you and Alice Meinier leave the building?

A. Leave the building?

Q. Yes.

A. No, we didn't leave the building. Yeah, wait a minute. We did leave to go over at the store. That is about it.

Q. Can you estimate what time that might have [65] been?

A. Between 10:00 and 10:30.

Q. When you got back, wasn't Mark Mood in your apartment at that time?

A. Yeah.

Q. Was he there alone?

A. No, he was there with Robert Crain and his friends.

Q. Your testimony is that sometime after your return you asked everyone to leave your apartment except for Mr. Mood; is that correct?

A. Well, there was Mood and her was with me, Alice was with me.

Q. Who did you ask to leave?

A. Robert Crain and his friends.

Q. Apparently your testimony is then that after that time you and Alice Meinier and Mark Mood sat in the apartment drinking?

A. Yeah.

Q. How long did you sit in the apartment and drink?

A. Well, as I said, I went over at the store between 10:00 and 10:30. So then that's how long that we [66] was, us three was there. As I said, between 10:00 and 10:30 until five after twelve. That is when I can't remember.

Q. Do you have any idea where Robert Crain was at that time?

A. No, I didn't.

Q. Isn't it true that sometime between 10:00 and 10:30 you went over to Danny Pregent's apartment and looked in and saw Robert Crain and Danny Pregent putting Doris Epps to bed?

A. No, I didn't see that.

Q. That is not true?

A. No.

Q. So it is your testimony then that the only time that you went back to Danny Pregent's apartment was approximately 11:00 o'clock to 11:30?

A. Yeah.

Q. And at that time you saw Danny Pregent, Doris Epps and Mr. VanArdsall; is that right?

A. No, I didn't.

Q. Who did you see that time?

A. I seen Robert VanArdsall on the edge of the bed and I seen his feet hanging from the bed as if he was [67] on his back laying back on the bed.

Q. When you say his feet, do you mean Mr. Pregent?

A. Yeah, Danny Pregent's feet.

Q. What was he wearing on his feet?

A. That is all I did see was shoes.

Q. And you never had occasion to go back the second time?

A. Huh?

Q. You never went back a second time to Mr. Pregent's apartment?

A. No, I didn't.

Q. Did you testify that the lights were on?

A. Yes, I did.

Q. Which lights were on?

A. There was every light was on in the house: bathroom, kitchen and there where he was.

Q. That would be the living room?

A. Yes.

Q. The bathroom door was open?

A. Yeah, it was.

Q. Was the radio on?

A. I can't recall that.

Q. Was Danny Pregent covered with anything?

[68] A. I can't answer that.

Q. How long were you back in your apartment until you passed out?

A. Well, as I said, I went over there to his apartment between 11:00 and 11:30. So I had to go over there between 11:30, 11:00 and 11:30 and I was over there. Until five after twelve, that is when I passed out.

Q. After you and Alice and Mark Mood were there in your apartment, did Danny Pregent ever come over to your apartment?

A. No.

Q. How much did Alice have to drink that day?

A. I don't know.

Q. Was she drinking?

A. Yes, she was.

Q. Was she also drinking hard liquor?

A. Yes, she was.

Q. Had she been drinking all-day?

A. I can't answer that question because it is hard to tell how much she had to drink.

Q. Did she start drinking in the morning with you?

A. Yeah, I would say so.

[69] Q. So you never saw Doris Epps in bed; is that correct?

A. That is true.

Q. When you saw Mr. VanArsdall, how was he dressed?

A. How was he dressed?

Q. Yes.

A. He did have on his clothes.

Q. What kind of clothes?

A. I don't know what that question is.

Q. When is the last time that evening you saw Doris Epps?

A. Doris Epps? I can't answer that question. The last time I can remember is that we was eating and that was around 4:30.

Q. The last time you saw her was around 4:30?

A. Yeah. I am saying that is what I am able to remember.

Q. Mr. Fleetwood, on or about the 6th of August, 1982, were you arrested and charged by the State of Delaware with a violation of 21 Delaware Code Section—

MR. REED: Objection, Your Honor. May we approach the Bench?

THE COURT: Yes.

[70] (Side bar conference not reported.)

THE COURT: I will ask the jury to step out for a minute while I decide a legal question.

(The jury left the courtroom.)

THE COURT: Counsel come forward.

(Side bar conference not reported.)

THE COURT: We will ask the witness to step out for just a minute.

(The witness left the courtroom.)

(Side bar conference not reported.)

THE COURT: Would you get the Rules of Evidence from the law library.

(Side bar conference not reported.)

THE COURT: Bring in the witness, please, and it is requested by the State we are going to have a voir dire of

the witness before we proceed with any questioning on the issue of possible impeachment relating to arrest and the disposition of that.

(The witness returned to the witness stand.)

THE COURT: Sir, they are going to ask you some questions outside the presence of the jury and we will proceed whenever the defendant is ready to proceed.

MR. NICHOLAS: Thank you, Your Honor.

[71] (Voir Dire Examination:)

BY MR. NICHOLAS:

Q. Mr. Fleetwood, do you have any bias or interest that has caused you to give the testimony that you have given here today, any bias?

A. I have got bias! What does that mean?

Q. Do you think you are going to get anything or have you gotten anything—

A. No, I got nothing.

Q. —out of the testimony you are going to give here today?

A. No, I haven't gotten nothing.

Q. On or about August 6, 1982, of this year were you arrested for being drunk on the highway?

A. Well, I ain't sure about August 6th, but, yes, I had been uptown and I did get locked up for it.

Q. To your knowledge is being drunk on the highway a criminal charge? You said you were locked up for it.

A. I was locked up for it?

Q. Is that what you said?

A. No, I didn't say that.

Q. Were you arrested?

A. Yes, I was.

[72] Q. Is being drunk on the highway a criminal violation to your knowledge?

A. A criminal violation?

Q. Is it against the law?

A. Oh, yes, sure it is.

Q. And on or about August 20, 1982, the 20th of August, was an information filed against you in the Court of Common Pleas for Kent County on the charge of being drunk on the highway?

A. That means what?

THE COURT: Regarding charges. Were charges brought against you in the Court of Common Pleas?

THE WITNESS: Yes.

BY MR. NICHOLAS:

Q. Were you further required to appear in the Court of Common Pleas for trial?

A. Yes, I was.

Q. Did you have to post a bond?

A. I posted a bond—

Q. In order to not be locked up?

A. Yeah, I did have to post a bond.

Q. Did you appear in court on August 31, 1982?

A. Yes, I did.

[73] Q. Did you have an attorney?

A. Yes, I did.

Q. Was that particular charge against you being drunk on the highway dropped?

A. Yes, it was.

Q. Didn't the State enter what is called a nolle prosequi that day dropping that charge against you?

A. I do not know what that means.

Q. The charge was dropped; is that correct?

A. Yeah, it was dropped.

Q. Did you and your attorney have any discussion with the prosecutor before this charge was dropped?

A. I can't answer that question because I was in the courtroom and I was told that it was dropped. So I don't know if my attorney did speak with the man.

Q. Isn't it a fact that you agreed or your attorney on your behalf agreed that in exchange for this charge being dropped against you that you would appear the next morning in the Attorney General's office to discuss this case?

A. Yes, it was.

Q. Did you comply with that agreement? Did you go?

[74] A. Yes, I did.

MR. NICHOLAS: Your Honor, I would like to at this time enter as Defendant's A, for Identification the certified copy by Ruth Biddle, clerk of the Court of Common Pleas, to the record in the case of which I am referring to. It was number 82-08-0021.

THE COURT: Hand it up to me. What did you want? The fact of the record here?

MR. WILLIAMS: Yes, Your Honor.

THE COURT: Can we agree it was dismissed?

MR. REED: Yes, we can.

THE COURT: You have a notice of nolle prosequi here. It is stipulated without this paper going in the record. For the record here so it is a part of the record—

MR. NICHOLAS: For purpose of voir dire only.

THE COURT: For purposes of voir dire only at this time. There was a notice of nolle prosequi entered on the charge of Title 21 Section 4149 against Robert J. Fleetwood and the clerk of the Court of Common Pleas is requested to note the same on record. Reason: Insufficient evidence, signed by D. C. Reed, August 31, 1982.

Can everyone agree and stipulate that was [75] done?

MR. REED: Yes, Your Honor.

THE COURT: Proceed.

BY MR. NICHOLAS:

Q. Mr. Fleetwood, did your conversation with the Deputy Attorney General have any bearing at all on the testimony you have given here today?

A. I don't understand quite what you mean.

Q. Well, you said before that you didn't expect to get anything out of testifying here today. Is that still your answer to that question?

A. Yes. I tell you because the only reason I am here is because I got to be here.

Q. Is that because of the conversation you had with the Attorney General?

A. No.

MR. NICHOLAS: I don't think I have anything further on voir dire, Your Honor.

BY MR. REED:

Q. Shortly after this offense occurred, January 1st, did you give a statement to the Smyrna Police, particularly Detective Bowers?

A. Yes, I did.

[76] Q. Did you tell him everything you knew happened?

A. Yes.

Q. Do you think you told him basically what you have testified to today?

A. Yeah, I do.

Q. The fact a charge, a misdemeanor charge was dropped against you in the Court of Common Pleas has that affected your testimony in any way?

A. No.

Q. Have you lied today because of that?

A. No, I haven't lied.

Q. What was your understanding of why the charge was dropped?

A. Well, I did understand that I did feel that you wanted to make sure that I knew what I was talking about and I do feel that you wanted to make sure I had my story together before coming in here. So that is why I did feel that it was dropped.

Q. Is that charge, the charge being dropped or your interview in the office?

A. Yeah, just the interview in the office.

Q. Would you have come into the office for an [77] interview whether the charge was dropped or not?

A. Yeah.

Q. Do you remember whether you were given an Attorney General's subpoena to appear at my office?

A. Yes, I was.

Q. Did you respond to the office in response to that?

A. Yes, I did.

Q. Anyone tell you to lie?

A. No.

Q. And you have testified the way you have testified today because the charge was dropped?

A. No.

MR. REED: I have no further questions, Your Honor.

MR. NICHOLAS: Your Honor, I don't have anything further on voir dire.

THE COURT: Did you feel because the charge was dropped any pressure on you to change what you felt was the true story in any way whatsoever?

THE WITNESS: No, sir, because when I was coming in this courtroom I had my mind that I wasn't going to hide nothing from nobody and I wasn't going to be making [78] up no lies.

THE COURT: Back in August when the charges were dropped, do you feel they were dropped because it was expected for you to change your story of what you felt to be the truth in any way?

THE WITNESS: No.

MR. NICHOLAS: Your Honor, may we approach the Bench?

THE COURT: Yes.

(Side bar conference not reported.)

(End of Voir Dire Examination.)

THE COURT: We will ask the witness to step out at this time.

(The witness left the courtroom.)

THE COURT: We have completed the voir dire. State have any objections, comments?

MR. REED: State objects on the ground of relevancy and any remote relevancy the voir dire has shown no relevancy, no bias and to whether this witness' testimony has been affected by a misdemeanor charge being dropped in the Court of Common Pleas. He has not laid a foundation for that.

It is our position any remote relevance at all [79] on the question of bias is outweighed by the prejudicial effect and confusion of the issues in this particular case as to this witness' testimony, and I might add defense has shown nothing as to or can prove nothing as to how this witness' story differs particularly from the time he told this to Detective Bowers.

MR. NICHOLAS: Your Honor, I don't think it is incumbent upon the defense in cross-examination to prove that the stories differ or do not differ. I think that first of all the evidence is relevant as defined by 401 of the Uniform Rules of Evidence, relevant to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

THE COURT: The issue is whether or not by 403 which states: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, or by consideration of undue delay, waste of time or needless presentation of cumulative evidence." That is the issue to be decided by the Court.

MR. NICHOLAS: That's correct, Your Honor. I think one rule has to be balanced against the other and [80] I think they both come within the constitution ambient of whether or not this defendant is entitled on cross-examination to inquire into bias and it is the defendant's position that that kind of inquiry is an essential element of his right to confrontation of witnesses.

It is the defendant's position that it doesn't really matter at this point how he answers these questions. The

jury is the trier of fact. The jury is entitled to determine whether they think there is any bias or there isn't any bias. I think there is a sufficient showing on the record that there might well be.

He testified somewhat differently when questioned by me than when questioned by the State and the issue here I think falls within four squares of, or nearly four squares of Wintjen vs. State Delaware Supreme Court decision decided at 398 At. 2nd 780, 1979 decision. I think that this kind of inquiry is critical to allowing the defense a probing effective cross-examination. I don't think that the danger of prejudice is unfair to the State here.

The issue is is the jury going to find this witness believable or not, and the defendant ought to be entitled to inquire into that area out of this witness' mouth and let the jury make up its mind whether it finds [81] his story credible or incredible.

THE COURT: The ultimate fact, so the record is clear, you are trying to show here is bias of the witness by the fact he was arrested and, therefore, because of the fact of the arrest and the nolle prosequi and he feels pressure to testify favorably for the State. Isn't that what you are trying to show?

MR. NICHOLAS: We are trying to show bias was created as a result of the arrest and that of the charge being dropped, and we are trying to show there was some connection in the witness' mind between that charge being dropped and between his being told to appear in the Attorney General's office the next morning in relation to this case and that was his testimony. He did answer yes, and at one point he did say something about thinking that

he had to show up over there at the Attorney General's office as a result of the charge being dropped. We are not, of course, trying to impeach his credibility by showing simply that he was arrested. There is more to it than that.

THE COURT: Counsel come forward.

(Side bar conference not reported.)

THE COURT: Any further comments by counsel?

MR. NICHOLAS: No, Your Honor.

[82] THE COURT: Objection sustained based upon the Rule 403.

MR. NICHOLAS: Your Honor, can we enter this as an exhibit at this point?

THE COURT: We have stipulated to everything that is in it. I am just trying to keep the paperwork out. If you want it in the record —

MR. NICHOLAS: Yes, I think at this point we would like it in the record.

THE COURT: The State is willing to read the whole thing and stipulate the whole thing.

MR. NICHOLAS: Simply for the purposes of the record for voir dire.

THE COURT: Counsel.

(Side bar conference not reported.)

THE COURT: Will counsel also stipulate for the purpose of the record that on August 6, 1982, a bail bond was filed. On August 20, 1982, an information was filed

and on August 20, 1982, a plea of not guilty was entered, jury trial requested and on August 31, 1982, a nolle prosequi, the Attorney General requested a nolle prosequi be entered for insufficient evidence.

MR. REED: So stipulated.

[83] THE COURT: Bring in the jury, please.

That stipulation is only for the purpose of the voir dire questions, the admissibility of the arrest.

MR. NICHOLAS: Your Honor, before we get the witness —

(Side bar conference not reported.)

THE COURT: Defense counsel outside the presence of the jury and outside the presence of the witness has indicated another line of questioning he wants to go into. We are having a side bar, and I am going to ask defense counsel to indicate what that line of questioning is at the present time.

MR. NICHOLAS: Very well, Your Honor. The line of questioning would be to inquire of this witness whether or not he in fact had been questioned by the Smyrna Police Department with regard to the murder of one Anthony Blake which murder took place on August 21, 1982. Specifically, the line of inquiry would be whether or not Detective Bowers, the chief investigating officer in the Epps' slaying, did not in fact pick Mr. Fleetwood up, take him to Anthony Blake's funeral and in the hearing of Anthony Blake's mourners and relatives questioned Mr. Fleetwood with regard to that murder investigation.

[84] Further, the line of questioning would then be whether or not as a result of that interrogation and any other interrogation which may have taken place whether Mr. Fleetwood considers himself now to be a suspect in that murder and whether or not considering himself to be such he has any bias or interest in giving the testimony he has given here today.

As a wrap-up, I suppose, Your Honor, he would be questioned as to whether or not he has been offered any favors, inducements, promises or deals with reference to that investigation in exchange for the testimony he has given here today. That is all, Your Honor.

MR. REED: The State would object on the ground of relevancy for all those questions and our basic position is even if he considers himself a suspect, again, we are talking about Rule 403 whether there is any remote probative value there and I contend on its face and on its face alone merely being a suspect does not say one way or the other whether you are going to be biased. You can be just as biased against the State. In fact, if he does consider himself a suspect, assuming that arguendo, and that would create unfair prejudice, confusion of issues, misleading of the jury to the true issues in the case.

[85] THE COURT: They have a last question they want to ask him. Whether or not any —

MR. NICHOLAS: Favors, inducements, promises or deals have been offered with reference to that investigation in exchange for his testimony here today.

MR. REED: I would have no objection to that question being asked on voir dire because I feel it should be

asked on voir dire because it is almost a fact of bringing in this other murder case by the back door to put it out in front of the jury at this point.

THE COURT: Bring in the witness, please. I am going to ask the last question.

Court will be recess for ten minutes.

(A recess was here taken.)

THE COURT: You may call the last witness to the stand, please.

(The witness returned to the stand.)

THE COURT: On the voir dire would defense counsel please ask the witness the last question.

(Voir Dire Examination:)

BY MR. NICHOLAS:

Q. Mr. Fleetwood, what favors, inducements, promises or deals have you been offered by either the State or [86] the Smyrna Police Department with reference to the investigation of the murder of Anthony Blake in exchange for your testimony here today?

A. None.

MR. REED: Your Honor, I object to the form of that question. I am confused. I am asking it be rephrased. Has he been offered any inducements, et cetera, in connection with your testimony today?

THE COURT: Have you been offered anything?

THE WITNESS: On what?

THE COURT: On anything?

THE WITNESS: No, I haven't been offered nothing.

MR. NICHOLAS: Favors, inducements, promises or deals.

THE COURT: Have you been offered any inducements, promises or deals —

MR. NICHOLAS: With reference to the investigation of the murder of Anthony Blake in exchange for your testimony here today?

THE WITNESS: No, I haven't.

MR. REED: Your Honor, I have no questions.

(End of Voir Dire Examination.)

[87] THE COURT: We are now ready to argue the point. Proceed.

MR. REED: I think the point is answered. There is nothing to ask at this point.

THE COURT: Defense have any comments?

MR. NICHOLAS: Yes, Your Honor. I think once again the defendant is entitled to show by a probing cross-examination whether this individual considers himself now to be a suspect in that murder investigation and whether he considers that it is important for him to co-operate with the Attorney General's office or the police department with reference to that investigation vis-a-vis the testimony he has given here today.

Again, I don't think it matters how he answers that question that has just been asked. I think he should be asked all the questions I indicated in the line we requested

so the jury can determine whether or not there is any bias in this witness' mind as a result of his considering himself to be or to have been a suspect in that investigation. It is up to the jury to decide whether he is credible, and the defendant is entitled to inquire into this area to show that and, again, Your Honor, I beg the Court's pardon, I think this also comes in the Wintjen vs. [88] State.

THE COURT: Based upon the questions presented, comments by counsel at the previous argument on a previous point, the questions answered by this witness, the state of the record at the present time, the State's objection is hereby sustained on the entire line of questioning.

How long do you anticipate it will take to complete your questioning?

MR. NICHOLAS: Your Honor, I would anticipate five to ten minutes.

THE COURT: Bring in the jury, please.

(The jury returned to the courtroom.)

CROSS-EXAMINATION, Cont'd.

BY MR. NICHOLAS:

Q. Mr. Fleetwood, you indicated on your direct testimony that you returned to your apartment sometime around 12:05 a.m.; is that correct?

A. 12:05?

Q. At five minutes after twelve midnight.

A. I was passed out at five after twelve. I was already in my apartment.

Q. Didn't you testify that you knew that you passed out at approximately 12:05 because you heard the [89] New Year's bells ringing?

A. Yeah.

Q. How long did those bells peal? How long did they ring?

A. It just rang. That is all I heard.

Q. What kind of bells were they?

A. They were just bell from like a—

Q. Church?

A. Church bells.

Q. Were they one set of bells or two?

A. I don't know how many sets there was.

Q. Well, were bells ringing all over town?

A. Yeah.

Q. Ringing all over town. Did any whistles blow?

A. I don't know about no whistles.

Q. Can you estimate whether those bells were loud?

A. Yeah. I think they was loud enough for me to hear them.

Q. So you could clearly hear them?

A. Yeah.

Q. That is how you knew what time it was?

A. Yeah.

Q. Because you knew that that was New Year's Eve [90] and the bells would ring at 12:00 midnight?

A. Right.

MR. NICHOLAS: I have no further questions, Your Honor.

MR. REED: No redirect, Your Honor.

THE COURT: You may step down. Thank you.

MR. REED: May this witness be excused subject to recall?

THE COURT: May the witness be excused?

MR. NICHOLAS: Yes, Your Honor.

THE COURT: You may be excused. Thank you.

(The witness stepped down.)

* * *

(The jury left the courtroom.)

THE COURT: May I see counsel at side bar, please?

(Side bar conference not reported.)

MR. NICHOLAS: Our request, Your Honor, is for expedited copy of the testimony of Robert Fleetwood which I understand is different from daily copy. The purpose of making a request is that we may review his testimony for purposes of calling other witnesses, possibly to impeach that testimony. We were not aware that his testimony would be what it was today and we would like to have that copy so we may call other witnesses on the defendant's case.

THE COURT: Request denied. Anything further?

MR. NICHOLAS: I don't think so, Your Honor.

MR. REED: Nothing.

THE COURT: Thank you. Tomorrow morning at 10:00 o'clock. Do you want to leave first?

(The defendant left the courtroom.)

*Direct and Cross Examination of
Alice Jane Meinier*

Volume 1 at 5-6, 9-28, 59

[5] September 16, 1982
Courtroom No. 1
10:00 o'clock a.m.

PRESENT: As before noted.

THE COURT: Are we ready for the jury to come in?

MR. REED [prosecutor]: Not yet, Your Honor. Before we start, I have two witnesses here today: Howard Fortner and Bruce Timmons, who should be brought in and put under sequestration.

THE COURT: You have only one?

MR. REED: I have one coming in at 1:00 and we have another one that was put under sequestration yesterday.

THE COURT: Do you have enough to go through the whole day?

MR. REED: Can we approach the Bench?

THE COURT: All right.

(Side bar conference not reported.)

THE COURT: If you will bring the witnesses in, please.

MR. REED: That will be Alice Meinier. You don't want Fortner and Timmons yet?

THE COURT: Yes, bring them in also.

[6] (Witnesses entered the courtroom.)

THE COURT: Counsel come forward to side bar, and take this down. You are under sequestration which means that you must not talk to anyone about the case. There was some question as to whether or not you were talking with Mr. Fleetwood yesterday after the Court was over. Were you talking about anything that he may have testified to?

MS. MEINIER: No.

THE COURT: You have had no discussions with him about his testimony or anything dealing with the case?

MS. MEINIER: No.

MR. WILLIAMS [defense counsel]: Thank you, Your Honor.

THE COURT: Would the two officers come up, please.

MR. REED: Patrolman Timmons and Patrolman Fortner.

THE COURT: Gentlemen, you have been subpoenaed as witnesses in this case. You are under sequestration. I am going to give you specific instructions about what sequestration means.

* * *

[9] DIRECT EXAMINATION

BY MR. REED:

Q. Would you state your name one more time, please.

A. Alice Jane Meinier.

Q. What is your address?

A. 436 Ronald Lane, Smyrna.

Q. Do you know one Robert Fleetwood?

A. Yes.

Q. Were you at his apartment December 31, 1981?

A. Yes.

Q. Do you remember approximately when you went there?

A. Between 12:00 and 1:00.

Q. That would be —

A. In the afternoon.

Q. Again, approximately how long did you remain there? Would it be fair to say you remained there most of the day?

A. Yes, I was there —

MR. WILLIAMS: Objection, Your Honor. That is a leading question.

THE COURT: I didn't hear your objection.

MR. WILLIAMS: It is a leading question, [10] Your Honor.

MR. REED: It is a leading question admittedly, Your Honor, but it is merely in the way of introductory-type testimony. It is not crucial.

THE COURT: I will allow the question. Proceed.
BY MR. REED:

Q. How long were you there?

A. The entire day.

Q. Who else do you remember being either in that apartment or in the area of that apartment, the Fleetwood apartment, during that day?

A. Bobby Crain, Michael Crain, a blond girl, I can't remember her name, Ada, I think or Ida, Danny.

Q. Danny is who?

A. Pregent.

Q. What was his relation to this area?

A. He lives across the hall.

Q. Who else do you remember either coming and going or staying?

A. Mark Mood and the girl that lives upstairs stopped in.

Q. Did you know all the people that were there?

A. No.

[11] Q. About how many people would you say were there, again either that stayed or that left?

A. Probably thirty or forty.

Q. Where did you spend most of your time that day?

A. In Bobby Fleetwood's apartment.

Q. What basically was going on in the area?



A. Well, in the afternoon they were just sort of getting together and stopping in to see each other. Mrs. Epps came between 1:00 and 2:00 to look at the apartment.

Q. Did she come back or did she stay?

A. She stayed, I gather.

Q. Now, up to that point did you know Mrs. Epps at that point?

A. No.

Q. Was dinner served later that evening?

A. Yes.

Q. Do you remember approximately what time that was?

A. I would say about 6:30 or so.

Q. About how many people were at dinner?

A. Maybe twenty-five.

[12] Q. Where was that dinner served?

A. In Danny Pregent's apartment.

Q. What did you have for dinner? Do you remember?

A. Spaghetti. She had made spaghetti.

Q. She being who?

A. Miss Epps, and also pork chops.

Q. What do you remember happening after dinner?

A. After dinner Danny — I was across the hall and Danny came out of his apartment.

Q. This being Danny Pregent?

A. Yes, and he was very angry and Bobby Crain was holding him and he knocked quite a large hole in the wall board.

MR. WILLIAMS: I am sorry, Your Honor. I can't hear the witness.

THE COURT: If any member of the jury at anytime cannot hear, please raise your hand immediately.

MR. REED: Would you please try to keep your voice up so everyone can hear.

BY MR. REED:

Q. What did you say? You said he knocked something.

A. Pardon me?

[13] Q. What did he do?

A. He knocked a large hole in the plasterboard in the hall.

Q. Do you remember Mark Mood, Mark Mood arriving?

A. Yes.

Q. Did you know him before that night?

A. No.

Q. What time approximately did he arrive?

A. Between 10:00 and 10:30.

Q. Where did he arrive, at Pregent's or Fleetwood's apartment?

A. At Bobby Fleetwood's.

Q. Was there anybody else in Fleetwood's when he arrived?

A. Only myself.

Q. Was Fleetwood there?

A. Yes.

Q. Could you just explain the circumstances of his arrival, what you remember happening at that point?

A. He came about 10:30 and we just sat there and talked for an hour, hour-and-a-half.

Q. Did anyone leave the apartment once he arrived, and there is you, he and Fleetwood in that apartment.

[14] A. No.

Q. Did you leave at any point?

A. I left to see what time it was because there wasn't any electricity in Bobby Fleetwood's apartment. So I went across the hall to see what time it was.

Q. What did you do?

A. The clock was on the floor in the kitchen. So I went inside and looked at the clock and it was seven minutes of twelve.

Q. Seven of twelve?

A. Uh-huh (affirmative).

Q. Did you see a body in the kitchen at this time?

A. No.

Q. What was the condition of the lighting in the kitchen at this time?

A. The kitchen light was on and the bathroom light was on.

Q. How about the bedroom living room light?

A. That was completely dark.

Q. Did you look in there?

A. No.

Q. I am going to hand you a photograph partially [15] blocked out at the bottom. Do you recognize what this is a photograph of?

A. Yes, this is the clock that was on the floor.

Q. Is this the position the clock was in when you went into the kitchen?

A. Pretty much so, yes, but I do not remember any laundry basket at all.

Q. Would you mark with an X, a large X where you were when you went into the kitchen at this point to look at the clock?

(The witness marked the picture.)

MR. REED: Your Honor, I would ask this picture be marked for identification at this point as State's E, I believe.

THE COURT: It may be marked E, for Identification.

MR. WILLIAMS: Your Honor, may defense counsel examine the photograph?

THE COURT: All right.

(Photograph marked, "State's Exhibit E, for Identification.")

MR. REED: I might add it is only being marked for identification, Your Honor.

[16] THE COURT: All right.

BY MR REED:

Q. You looked at the clock. What did you do at that point?

A. The door was open when I went in. It was unlocked. I looked at the clock and went right back out, shut that door and also the door that goes out from the hall to the other hall and I went back to the other apartment.

Q. Back over to what apartment?

A. To Bobby Fleetwood's and I said it's seven minutes of twelve.

Q. Who was over there again at this point?

A. Mark, Bobby and myself.

Q. What do you remember happening next?

A. Next thing I heard bells or chimes went off which was I presume at midnight.

Q. What was Fleetwood doing around this time?

A. He went to sleep about five minutes after that, five or ten minutes.

Q. Did you go to sleep?

A. No.

Q. What did you do?

[17] A. I sat and talked to Mark.

Q. What happened later?

A. About an hour, an hour later, hour-and-fifteen minutes — I can't be sure because of the electricity, but there was a knock at the door.

Q. Could you keep your voice up, please.

A. There was a knock at the door.

Q. The door to what?

A. Bobby Fleetwood's apartment. There was a knock on the outer door because I had locked the outer door and the inner door and I asked who it was and they said it's Bobby. So I opened the door.

Q. Why did you open the door?

A. I thought it was Bobby Crain who I know.

Q. What happened next?

A. He came in and he went over and sat in a chair by the window.

Q. How would you describe this person's appearance at this point?

A. He was very tall. He had on a light blue shirt which was splattered with blood and he had a jacket with him.

Q. What type of jacket?

[18] A. A green car coat, army-type jacket.

Q. Do you remember the length of his hair?

A. Past the collar.

Q. He came in and sat down?

A. Yes.

Q. Where did he sit down?

A. He sat in front of the window but with his back towards the window so the lighting — I couldn't see as well as if he had been sitting the other way.

Q. Let me break in for a moment. Would you examine this object and let me know if that has any significance to you?

A. That is the way the shirt looked.

Q. That is the way the shirt looked?

A. It looked as though you had had a nosebleed. It wasn't full-blooded, just splattered.

MR. REED: You can put that back in the bag.

Your Honor, I would ask at this point that this shirt be marked State's F, for Identification.

THE COURT: It will be marked State's F, for Identification.

(Shirt marked, "State's Exhibit F, for Identification.")

[19] BY MR. REED:

Q. Would you continue from what you remember happening when he went over and sat in the chair.

A. He sat down and he put his hands out and they were all bloody.

Q. How did he put his hands out?

A. (Indicating.)

MR. REED: Let the record indicate he put his hands out palms forward.

BY MR. REED:

Q. Would you continue, please.

A. He said he had gotten in a fight and at that point he said — I don't know the exact words — something to the effect of —

MR. WILLIAMS: Your Honor, we object. If she doesn't know the exact words, she shouldn't testify.

MR. REED: Your Honor, I don't know any rule of evidence that says somebody cannot testify to what they remember.

THE COURT: Objection overruled. Proceed.

THE WITNESS: He said but I got them back.

BY MR. REED:

Q. Would you continue, please.

[20] A. That is the first time I saw the knife.

Q. You saw what?

A. That is the first time I saw—when he said I got them back he, in his right hand, I believe, had a knife.

Q. Do you remember what the knife looked like?

A. It was a long knife.

Q. What type of edge? Do you remember that?

MR. WILLIAMS: Objection, Your Honor. That is a leading question.

THE WITNESS: Serrated.

MR. REED: I don't think that is a leading question, Your Honor.

THE COURT: I will allow the question. Proceed.

THE WITNESS: The type knife that you would slice tomatoes with. It was serrated.

BY MR. REED:

Q. What happened at this point?

A. I said, "That's a lethal weapon, Bobby. You better get rid of that because it's not safe" and Mark stood up and took the knife away from him. I don't know if he had seen—Mark was sitting in the dark over in the corner. Mark took the knife away.

Q. You say you don't know whether he had seen [21] Mark at this point?

MR. WILLIAMS: Objection, Your Honor. She can't testify as to what is in someone else's mind.

MR. REED: Your Honor, she stated she doesn't know.

THE WITNESS: Yes.

THE COURT: Objection sustained. Proceed.

BY MR. REED:

Q. Would you continue, please. You said Mark got up.

A. Mark got up and Mark took the knife and he put it in the sink in the kitchen.

Q. Who put the knife in the sink in the kitchen?

A. Mark Mood.

Q. Where did he get the knife from?

A. He took it from Bobby and I said, "Go wash your hands."

Q. You said that to who?

A. Bobby VanArdsall. He went in the bathroom and there wasn't any water pressure. So I said, "Well, wash them in the sink."

Q. Now, the bathroom, which bathroom did he go in?

[22] A. Bobby Fleetwood's apartment and I said, "Well, wash them in the kitchen sink" which is what he did and then he was washing his hands he said to me, "I think there's something wrong across the hall" and I said, "Well I'll go over and see. I was over there not too long ago."

Q. Would you keep your voice up just a little bit louder, please. What did you do?

A. I went across the hall. I opened both doors. I opened the door that leads into the Pregent apartment. I did not go down the two steps or one step, whatever. I just opened the door slightly and the same lights were on.

Q. In what room?

A. The kitchen and bathroom and I looked to the left and I just could see someone lying there from the knees down and I could see a lot of blood all around. So I slammed the door.

Q. Let me break in one time. You said you were in that room at seven of twelve?

A. Exactly by that clock.

Q. Had you seen the body at that point?

A. No.

Q. Would you have seen this body at this point?

[23] A. Yes.

MR. WILLIAMS: Objection, Your Honor. That is speculation.

THE COURT: Objection sustained. Disregard the last question and answer to the jury I am instructing.

BY MR. REED:

Q. Did you look in the area or were you in the area where you saw the body?

A. No, I just shut the door right away.

Q. What did you do?

A. Jumped back.

Q. What happened next?

A. I just—I got a little hysterical, I guess, and Bobby VanArdsall held on to me and he said, "It's all right" and I said, "Well, the person might still be in there."

Q. I am sorry. You said what?

A. I said the person might still be in there because that one room was still dark.

Q. What person were you referring to?

A. Well, I said there's something wrong. I was referring to the person that might have hurt that person.

Q. What happened at this point?

[24] A. Mark also went in. Mark went all the way in, Mark Mood.

Q. What did he do?

A. He left, went down the hall and down the steps to look for a policeman.

MR. WILLIAMS: Objection, Your Honor. She doesn't know what happened after Mark Mood left unless she went with him. I ask that answer be stricken.

THE COURT: Do you know of your own knowledge if he went down the hall? Is your objection about the fact he was going down the hall?

MR. WILLIAMS: No, Your Honor. I think she testified he left the building and went somewhere. Unless she went with him, I don't think she is competent to testify to that.

MR. REED: I have no argument on that, Your Honor.

THE COURT: Objection sustained.

BY MR. REED:

Q. Did the police arrive?

A. Yes, right away.

Q. Approximately how long was it between your discovery of the body and the police's arrival?

[25] A. Maybe three or four minutes. One policeman arrived.

Q. I am going to hand you an object. What significance does this have to you?

A. That is the type of knife that was, he had in his hand. I remember it well because it was in the sink and I could see it better because he washed his hands which cleaned it off.

MR. REED: I would ask that this knife be marked State's G, for Identification.

THE COURT: Let it be marked State's G, for Identification.

(Knife marked, "State's Exhibit G, for Identification.")

BY MR. REED:

Q. What do you remember happening—do you remember who the police were that arrived initially?

A. Yes, Officer Timmons. He knocked on the door because the outer door was locked and I went down and let him in and he came up the steps and he went right in the apartment and I went down one step, but I did not go all the way inside.

Q. Did any other police arrive?

[26] A. Oh, yes.

Q. Any other police go into Fleetwood's apartment?

A. Yes.

Q. Did you show them anything in his apartment?

A. Yes, I took the police and I showed them where the knife was.

Q. Did you tell the police either at that time or later that morning what had happened?

A. That night I talked to Officer Timmons and I talked to Detective Bowers.

Q. Did you tell them what happened?

A. Yes.

Q. Would you look around the room and see if you recognize the individual?

A. Yes.

Q. Would you point the individual out, please?

A. Behind the pillar.

Q. With the brown coat?

A. Uh-huh (affirmative).

MR. REED: Let the record reflect the defendant has been identified.

BY MR. REED:

Q. The police got there. What do you remember [27] happening next?

A. Bruce asked me to stay out in the hall.

Q. This is Timmons?

A. Yeah, excuse me. He asked me to stay out in the hall and I stood there while all the police came in and I couldn't see too clearly because there is a double door there, but Bobby had stayed there. He didn't leave.

Q. Bobby—

A. Bobby VanArdsall had stayed there, and the only other things I saw was they went into Danny's apartment and brought Danny out.

Q. Danny Pregent?

A. Yes, and he had on a pair of slacks. He didn't have shoes on.

Q. Did you see what eventually happened to both VanArdsall and Pregent?

A. They were handcuffed.

Q. They were what?

A. Handcuffed.

Q. Where did this take place?

A. In the hallway.

Q. If you know, how does Daniel Pregent compare in size with Robert VanArdsall?

[28] A. Well, he is a very, very short person.

Q. He being who?

A. Danny Pregent is probably about five eight or five eight-and-a-half, maybe five nine. I don't really know, and Bobby VanArdsall is very, very tall. I'd say about six foot. I don't know.

Q. I am going to hand you a photograph. What does this photograph depict?

A. This is a photograph of the knife in the sink in Bobby Fleetwood's apartment.

Q. Is this a true and accurate representation of that?

MR. WILLIAMS: Objection, Your Honor. I don't see how the witness can identify that as being the knife in the sink in the particular apartment. My recollection that is a close-up of the knife.

MR. REED: Your Honor, that is a question of weight, not admissibility.

THE COURT: I will allow the question. Proceed. You may answer the question.

THE WITNESS: I recognize it because there were dishes in the sink.

CROSS-EXAMINATION

[59]

* * *

Q. I understand it is a long time ago.

A. No, there weren't any clocks.

Q. There weren't clocks either. From that point in time, whenever that point in time may have been, did Robert Fleetwood leave his apartment at any point thereafter?

A. You mean after 8:00 or 9:00?

Q. Yes.

A. No.

Q. Whenever he put the people out, other than going next door to look at Mr. Pregent's clock at seven minutes of twelve, did you leave Robert Fleetwood's apartment at anytime?

A. No.

Q. You testified I believe that Mark Mood knocked on the front door at some point.

A. Between 10:00, 10:30.

Q. Was anyone with Mark Mood at that time?

A. No.

Q. How long was Mark Mood present in Mr. Fleetwood's apartment prior to Robert VanArsdall knocking on the door?

A. From either 10:00 or 10:30 until about 1:00.

Direct and Cross-Examination of Robert E. VanArsdall

Volume X at 40-63, 70-71, 78-79

[40] Q. [Mr. Williams, defense counsel]. Is that the first time someone has ever refused to go on a date with you?

A. No.

Q. About how long were you at the Lewes Dairy Market parking lot?

A. Maybe forty-five minutes to an hour.

Q. What did you do after you left the Lewes Dairy Market parking lot?

A. She took me uptown to the Four Corners which is the intersection of Main and Commerce.

Q. Is that at or near the center of Smyrna?

A. Yes.

Q. Cheryl Foraker was driving?

A. Yes, she was.

Q. Whose car? Whose automobile was this?

A. It was hers.

Q. What did you do when you arrived at the Four Corners area?

A. She let me off and I went to Robert Cole's apartment.

Q. How far is Robert Cole's apartment from the Four Corners intersection?

A. It is only a few doors from there.

Q. What happened when you arrived at Robert Cole's?

A. He wasn't home.

[41] Q. What was the weather like at that point in time, do you recall?

A. It was rainy and very cold.

Q. What did you do when Robert Cole wasn't at home?

A. I was standing there thinking what to do next and I turned around and seen a light on in Pregent's kitchen.

Q. Can you see Daniel Pregent's apartment from Robert Cole's?

A. Yes.

Q. Do you have any idea approximately what time it was at this point?

A. It was roughly about 11:00—a few minutes after 11:30.

Q. How do you know it was a little after 11:30?

A. I looked at my watch.

Q. You had a watch on?

A. Yes.

Q. What did you do when you saw the kitchen light in Daniel Pregent's apartment?

A. I jumped the fence and went up the back stairs, knocked on the back door.

Q. How did you know the back stairs went into Mr. Pregent's apartment?

A. The second time there he showed me the back door. He said just in case Robert Cole ain't home, to come up the back [42] stairs.

MR. REED [prosecutor]: I couldn't hear that, Your Honor.

THE COURT: Will you repeat your last answer, please? Slide closer to the microphone if you want.

THE WITNESS: When I was at Pregent's the second time he said, he showed me the back door and said if Robert Cole was not home I could come up the back stairs.

BY MR. WILLIAMS:

Q. Can you describe these back stairs to Daniel Pregent's apartment?

A. They are wooden and partially enclosed at the top.

Q. What did you do when you went up the back stairs?

A. I knocked on the door.

Q. Did anyone answer the back door?

A. Pregent answered the door.

Q. Daniel Pregent?

A. Yes.

Q. How was Daniel Pregent dressed?

A. He had blue pants, T-shirt—I am not sure if he had a shirt on. I can't remember if he had any shoes or socks on.

Q. How were you dressed at that time? The same as in the morning?

A. Yes.

Q. Did Mr. Pregent invite you in his apartment?

[43] A. Yes, he did.

Q. What occurred next?

A. Well, we stood in the kitchen and I made a remark about being hungry and he said, "Go ahead and make a couple sandwiches."

Q. Was there a light on in any room other than the kitchen?

A. No.

Q. Did you, in fact, make some sandwiches?

A. Yes, I made two.

Q. What kind of sandwiches, do you remember?

A. They were peanut butter and jelly.

Q. Did you and Daniel Pregent remain in the kitchen?

A. He kept going into the living room, back and forth between the living room and kitchen.

Q. What did you do after you finished eating your peanut butter and jelly sandwiches?

A. The cat, he come into the kitchen and we was playing with that.

Q. Whose cat was that?

A. I believe it was Danny's.

Q. Was this a cat or a kitten?

A. It was a young cat between six months, to a year old.

Q. It didn't appear to be full-grown?

[44] A. No.

Q. Was Mr. Pregent in the kitchen when you were playing with his cat or kitten?

A. Yes, he was.

Q. Did you do anything else in the kitchen?

A. We stood there and talked for a while.

Q. Do you remember what you were talking about?

A. I believe we were talking about the cat. I think he was telling me how he found it or something like that.

Q. What did you do next after you were playing with the cat?

A. Well, he said, "Follow me to the living room" and I took my coat and went into the living room and he said if I wanted to, I could sleep here on the cushions.

Q. Was there a light on in the living room?

A. No.

Q. Where are these cushions you were referring to or where were they then?

A. They were laying alongside of the sofa bed.

Q. What did you observe when you entered the living room?

A. Sofa bed was out. There was someone on the bed.

Q. Was that individual on the bed covered or uncovered?

A. Covered.

[45] Q. Did you know who that individual was?

A. Not at that time.

Q. Did you subsequently learn the identity of the individual on the bed?

A. It was Doris Epps.

Q. What happened after you entered the living room?

A. I put my coat in the corner by the bed, sat on the sofa and I asked Danny if he wanted a drink. He went and got two glasses. I poured the rest of the bottle into the two glasses.

Q. What were the two of you drinking?

A. Southern Comfort.

Q. What did you do next?

A. The cat come running in and went up the back of the sofa and I sat on the corner of the bed, playing with it for a little while and it took off.

MR. REED: I have to object again. I cannot hear what the defendant is saying.

THE COURT: Will you speak up a little bit louder.

BY MR. WILLIAMS:

Q. Try moving this up a little bit, Bob. Try to talk right into that if you can, please.

I think we are at the point where you were saying you and Danny Pregent had a drink and then the cat came in.

A. Yes.

[46] Q. What happened when the cat entered the living room?

A. The cat went on the back of the sofa bed. I sat on a corner of the bed and played with it for a little while 'til it went off into the room somewhere. I sat back down on the cushions.

Q. Where were the cushions?

A. They were alongside the bed.

Q. Are these the cushions for the sofa bed?

A. Yes.

A. Do you remember which side of the bed the cushions were on?

A. They were on the side of the bed nearest the door which would be the left side of the bed if you are standing at the foot.

Q. If you were facing the bed, which side, the right or left?

A. Left.

Q. What did you do after you sat down on the cushions on the floor?

A. We sat down and talked.

Q. Who were you talking to?

A. Danny Pregent.

Q. How long did you continue to talk to Danny Pregent?

A. I don't know. It was a while. He said he had to go do something. He left.

[47] Q. Do you know what Mr. Pregent was doing?

A. No.

Q. You said he left. Do you know if he left the apartment or not?

A. I don't. He just left the room.

Q. You don't know if he left the apartment or not?

A. No.

Q. What happened after Mr. Pregent left?

A. I was sitting there a few minutes and a person on the bed sat up and she asked me if I wanted to have sex. I said, "Fine." That's when I found out it was a woman.

Q. You didn't know who it was up to that point in time?

A. No.

Q. Had the individual on the bed said anything at that point in time?

A. No.

Q. Did the two of you, in fact, have sexual contact?

A. Yes, we did.

Q. What happened?

A. I took my shoes and my pants and shorts off. She took her pants and her shorts off. We had sex and I got

off the bed and I got dressed and sit back down on the cushions.

Q. Was there anything unusual about the bed? Did you observe anything unusual about the bed at that point in time?

[48] A. No.

Q. You sat back on the cushions.

What did you do next?

A. Well, I was sitting there smoking a cigarette and Danny come in and I asked him for a towel.

Q. Had Daniel Pregent been in the room when you and Doris Epps were in bed?

A. Not that I know of.

Q. Did Danny Pregent, in fact, give you a towel?

A. Yes, he did.

Q. Were the lights on in the living room at this time?

A. No.

Q. Do you recall what kind of towel or color towel it was?

A. No.

Q. Do you know where Mr. Pregent got the towel from?

A. No, I don't.

Q. Did he have to leave the room?

A. Yes, he did.

Q. What occurred next?

A. He brought me a towel. I wiped my hands off and gave it back to him. He left with it. I don't know where he put it. He just left the bedroom with it.

Q. Did Danny Pregent return to this living room/bedroom [49]area?

A. Yes.

Q. What occurred when Danny Pregent returned to the living room?

A. I was sitting down and we talked a little while more and I said I was tired and wanted to go to sleep.

Q. Did you, in fact, attempt to go to sleep?

A. Yes.

Q. Where did you attempt to sleep?

A. On the cushions.

Q. What did Danny Pregent do when you laid down on the cushions?

A. He laid on the bed.

Q. Was Doris Epps still in the bed?

A. Yes.

Q. Did you go to sleep on the cushions?

A. Yes, I think I did.

Q. What is the next thing you remember after lying down on the cushions?

A. There was movement on the bed.

Q. Someone was moving around on the bed?

A. Moving around on the bed.

Q. What did you hear?

A. Heavy breathing, people moving around on the bed and [50] the bed was squeaking.

Q. Did anyone say anything?

A. No.

Q. That you could hear?

A. Not that I could hear.

Q. Do you think you dozed off after that?

A. Yes, I believe I did.

Q. What is the next thing you recall?

A. That Danny—he got up and went into the kitchen and turned the light on.

Q. Turned the light on in the kitchen?

A. Yes.

Q. Did Danny Pregent return to the living room?

A. He returned a few minutes later.

Q. Did you know what he did in the kitchen? Could you see him?

A. No.

Q. What occurred after Daniel Pregent returned?

A. I was laying there and I fell off asleep. Next thing I know something was being drug by my feet.

Q. Was being drug by your feet?

A. I sat up and looked and Pregent was dragging Doris Epps by her wrists.

Q. Dragging her by her wrists?

[51] A. Yes.

Q. Had anybody said anything up to that point?

A. Not that I remember.

Q. Did you hear anything yell out or cry out?

A. No.

Q. Did Danny Pregent say anything to you?

A. No.

Q. Was the light on in the bedroom?

A. No, it wasn't.

Q. Was there any light on in the apartment at that point?

A. Just in the kitchen.

Q. Did you see Doris Epps?

A. Yes, I did.

Q. What did you observe?

A. She was limp and she just had her top on.

Q. What happened next?

A. When I asked him what was going on he hit me.

Q. Daniel Pregent hit you?

A. Yes.

Q. Where were you physically in the room in relation to Daniel Pregent when you were struck?

A. I was sitting on the cushions alongside the bed.

Q. You were sitting up on the floor?

[52] A. Yes.

Q. After you were hit by Mr. Pregent what happened next?

A. I had to sit there a few mintues to get my eyes cleared. I looked around and there was this—some dark stuff on the floor. It was wet. I had to put my shoes on. Went to the doorway in the kitchen.

Q. What did you observe when you went into the doorway in the kitchen?

A. Doris Epps lying on her back on the floor and Danny Pregent squatting over her.

Q. What was Daniel Pregent doing?

A. He was stabbing her.

Q. What was he stabbing her with?

A. Butcher knife.

Q. Did you actually see Daniel Pregent stab Doris Epps with a butcher knife?

A. Yes.

MR. REED: I am going to object to the leading nature of the question.

MR. WILLIAMS: Your Honor, I don't believe it is a leading question.

THE COURT: I will allow it. Proceed.

[53] BY MR. WILLIAMS:

Q. Did you actually see Daniel Pregent stab Doris Epps with a butcher knife?

A. Yes.

Q. How many times did he stab her, do you know?

A. Two that I seen.

Q. Can you describe those stab wounds for the jury?

A. One was under the rib cage and the other was in the heart area.

Q. Where were you standing at this point in time?

A. I was in the doorway.

Q. How far away from the body were you?

A. No more than maybe five or six feet.

Q. Where was the body?

A. It was roughly in the center of the kitchen.

Q. What did Daniel Pregent do after he stabbed Doris Epps twice?

A. He went along her neck and down her breastbone two or three times and then he just opened her up all the way down.

Q. You were watching this?

A. Yes.

Q. What did you do?

A. I was froze for a minute. I couldn't believe what was going on. I went up behind him and pulled him off. He twisted [54] on me and he knocked me down. I fell almost on her. I caught myself. My hand went right

about here (indicating) and slid a little. I was getting back up and he hit me again.

Q. You were struck by Daniel Pregent?

A. When I was getting up.

Q. Where was the knife, do you know?

A. At this time I don't know.

Q. How was Daniel Pregent dressed?

A. He just had pants on.

Q. He had no shirt on?

A. No shirt or shoes.

Q. Did he have socks on?

A. He was barefoot.

Q. After you were hit by Mr. Pregent in the kitchen, what is the next thing you recall?

A. The next thing I recall, I couldn't see that well because my eyes were blurry. He was coming out of the utility room and putting on his shirt.

Q. Where were you in the kitchen when you observed Daniel Pregent coming out of the utility room and putting on his shirt?

A. I was only sitting a couple feet from the body.

Q. Was there blood in the room?

A. There was blood all over the room.

[55] Q. Did you have blood on you?

A. Yes, I did.

Q. Did Daniel Pregent have the knife when he came out of the utility room?

A. No.

Q. Where was the knife?

A. It was in the body.

Q. Still sticking in the body?

A. Yes.

Q. Did Danny Pregent say anything to you?

A. No.

Q. Did he say anything unusual during this scuffle that you had in the kitchen?

A. He was just making animal noises and when he cut her open he just reached in with his hands and started pulling out guts and took a knife and started flicking stuff everywhere.

Q. What do you mean by "flicking stuff"?

A. He would stick the knife, stick it in and rip out and start flicking and throwing it everywhere.

Q. Was there blood flying around the room?

A. Oh, yes.

Q. What do you mean he was making "animal noises"?

A. Something similar to like a dog growling.

Q. Was he saying anything to you that you could [56] understand?

A. Not that I could understand.

Q. Did Daniel Pregent remain in the kitchen with you?

A. No. He walked into the bedroom.

Q. What did you do at that point?

A. I got up, pulled the knife out of the body. I walked into the bedroom after him.

Q. Why did you pull the knife out of the body?

A. I don't know.

Q. Was there blood on the knife?

A. Yes.

Q. What did you observe when you entered the bedroom?

A. Danny Pregent was lying on the bed.

Q. Was he covered up?

A. No.

Q. He was not covered up?

A. No, he wasn't.

MR. REED: Your Honor, objection. Leading questions.

THE COURT: All right. I will allow that one. Proceed.

BY MR. WILLIAMS:

Q. Was there any blood on Daniel Pregent before he went to the utility room?

A. Yes. It was on his chest, his arms and his bottom [57] of his pants. Like from the knees down.

Q. Did he have a great deal of blood or just a little blood?

A. He had a great deal. His chest was covered with blood.

Q. After you observed Daniel Pregent back in bed in the living room, what did you do?

A. I backed out of the bedroom and went across the hall and I took the knife with me.

Q. Why did you go across the hall?

A. To get help.

Q. What did you do when you went across the hall?

A. I knocked on Fleetwood's door.

Q. Robert Fleetwood's door?

A. Yes.

Q. Did anyone answer that door?

A. It was Jane Meinier who answered the door.

Q. What did Mrs. Meinier say to you?

A. She asked, "Who is it?", and I said, "Bobby."

Q. Did anyone open the door?

A. Jane Meinier.

Q. What happened after Mrs. Meinier opened the door of Robert Fleetwood's apartment?

A. She opened the door and let me in. I walked into the [58] kitchen and there was someone sitting in the corner by the couch and Robert Fleetwood was laying on the couch.

Q. Was Robert Fleetwood asleep or awake, do you know?

A. He was asleep.

Q. Who was sitting in the corner?

A. It was Mark Mood.

Q. Were there lights on in Robert Fleetwood's apartment?

A. No.

Q. Did you say anything when you entered Robert Fleetwood's apartment?

A. Not 'til I got to the center of the living room.

Q. What do you remember saying?

A. I said I got in a fight.

Q. Who had you been in a fight with?

A. Pregent.

Q. Did you say something about you had got him back or got them back?

A. Not that I remember, no.

Q. Do you remember what was said next?

A. I held my hand out for—the hand with the knife in it—and Jane Meinier, Mood, both reached for it and I don't know who got it.

Q. Someone took the knife from you?

A. Yes.

[59] What happened after the knife was taken from your hand?

A. I believe Mood took me to the window to see if it was cut and Meinier, she said go in the bathroom and wash my hands.

Q. Did you have blood on your hands?

A. Yes, I did.

Q. Did you give them the knife?

A. I just held my hand out and they both reached for it. I don't know who got it.

Q. Did you wash your hands in the bathroom?

A. No. There was something wrong with the sink. There wasn't water pressure.

Q. What did you do then?

A. Went to the kitchen sink and washed.

Q. Where is the kitchen sink in Robert Fleetwood's apartment?

A. It is in front of the door.

Q. The doorway is to the hall?

A. Yes.

Q. Was anyone with you while you were washing your hands at the sink?

A. Jane Meinier was standing to my left and Mark Mood was standing directly behind us.

Q. What happened while you were washing your hands, if anything?

[60] A. I said there was something wrong next door and Mark Mood left.

Q. Who did you tell that there was something wrong next door?

A. I said it to both of them.

Q. Mr. Mood left the apartment?

A. Yes.

Q. Did you see Mr. Mood again anytime that evening?

A. Not that I remember.

Q. What did you do after you washed your hands?

A. I followed Mrs. Meinier over to the door. She looked in and she just went hysterical.

Q. Which door is this now?

A. The door that opens up into the hall doorway that leads down to the — you got the bathroom, living room and kitchen.

Q. Are we talking about Robert Fleetwood's apartment or Daniel Pregent's apartment?

A. Daniel Pregent.

Q. Mrs. Meinier opened the front door and went hysterical.

A. The door was already open.

Q. Did she start crying?

A. Yes, she was.

Q. What did you do at that point?

A. I went around her and went into the kitchen.

[61] Q. What did you see in the kitchen?

A. The body was still there. There was blood everywhere. Her guts was hanging out.

Q. What did you do while you were in the kitchen?

A. I checked her wrist for a pulse. There was none.

Q. Do you know where Daniel Pregent was at this point?

A. I looked into the bedroom but I couldn't see where he was.

Q. What did you do after checking Doris Epps' pulse?

A. I left the apartment and went into the hall. I called for the police first because Jane Meinier was still standing in the doorway. She went running down the hall hollering for Mark.

Q. Mrs. Meinier went down the hall?

A. Yes.

Q. What happened next?

A. That's when I come out of the apartment and she was coming back down the hall. She was crying. I couldn't understand what she was saying.

Q. What did you and Mrs. Meinier do?

A. We went back into Fleetwood's apartment. She wanted to get Fleetwood up.

Q. What did she do?

A. She poured some water on him. She tried to shake him awake and she asked me if I could get him up. I shook him. I [62] couldn't get him up.

Q. Why were you trying to awaken Robert Fleetwood?

A. Meiner wanted him awake.

Q. Were you able to awaken him?

A. No, I wasn't.

Q. What is the next thing you recall?

A. I turned around and Meinier, she was standing by the sink. I walked over there and Officer Timmons went by the door.

Q. Was Officer Timmons in uniform?

A. Yes, he was.

Q. Did Officer Timmons speak to you?

A. No.

Q. Did Officer Timmons come into Robert Fleetwood's apartment?

A. Not at that time.

Q. Did he subsequently come into the apartment?

A. Later on.

Q. Did you remain in Robert Fleetwood's apartment?

A. Yes.

Q. How long were you there?

A. Maybe ten — fifteen minutes.

Q. When did you leave Robert Fleetwood's apartment?

A. When Officer Fortner asked me out into the hall.

Q. Why did Officer Fortner ask you out in the hall?

[63] A. Well, we were standing by the sink and Meinier said as plain as day, "Hide the knife. I think Bobby did it." She was referring to Robert Fleetwood. That's when Officer Fortner come in and shined his light around the corner into the sink and asked me to step out in the hall.

Q. Which sink was the knife in?

A. It was in the kitchen sink.

Q. Did you, in fact, step out in the hall with the officer?

A. Yes, I did.

Q. Was Officer Fortner also in uniform?

A. Yes, he was.

Q. What took place when you were out in the hallway?

A. I stood there a few minutes. I seen they brought Pregent out of the apartment. He was standing by the door with Montgomery and Timmons was down there. Officer Timmons and Officer Fortner, they were talking and then Officer Fortner, he come up and he told me to empty everything out of my pockets, put my hands on the wall and he frisked me down, handcuffed me and read me my rights.

Q. What did you observe about Daniel Pregent when he was brought out of his apartment?

A. Well, he looked like he didn't know what was going on. He was all disoriented.

* * *

[70] Q. Who was in the bed at that point?

A. Danny Pregent and Doris Epps.

Q. Did you stab Doris Epps?

A. No.

Q. Did you assist Danny Pregent in any way in the stabbing?

A. No, I didn't.

Q. Why did you go across the hall with the murder weapon?

A. Well, I wasn't going to leave it there with him. I didn't know how many knives he had there. I definitely wanted something with me if he ever got up.

Q. Do you know why Danny Pregent stabbed Doris Epps?

A. No.

MR. WILLIAMS: Your Honor, I have no additional questions of this witness at this time.

CROSS-EXAMINATION

BY MR. REED:

Q. Mr. VanArsdall.

A. Yes.

Q. Why again did you go across the hall with that knife?

A. I wasn't going to leave it there with him.

Q. Him meaning Pregent?

A. Yes.

Q. Now, I think you said something about protection for [71] yourself.

A. Yes. I definitely wanted something if he ever got up at the time.

Q. Do you know where he was at this point?

A. He was on the sofa bed.

Q. Was he covered?

A. No.

Q. So you took the knife. Where did you get the knife from?

A. It was in the body.

Q. Where in the body?

A. It was just above the pelvic bone.

Q. You took it across the hall so he couldn't get it?

A. Yes.

Q. Why was it again you didn't tell the police about Pregent's involvement the first time?

A. I didn't want to say anything that would get him in more trouble than he was already in.

Q. How many times did Pregent strike you?

A. Twice.

Q. Where did he strike you on your body, that is?

A. Roughly the neck area.

Q. How did he strike you? Was it a punch or a slap?

A. Punch.

* * *

[78] Q. The Kool cigarettes found in the kitchen, were they yours by chance?

A. I don't know if they were.

Q. You said you took the knife across the hallway when you took it away from Pregent to have something to defend yourself?

A. Yes.

Q. Are you sure when you did that Pregent wasn't in the bathroom in his apartment washing up?

A. Yes, I am sure.

Q. Do you know when he washed up, if he did?

A. I don't know when he washed up really.

Q. Did you know who was across the hall?

A. All I know, Fleetwood was across there.

Q. When did you last see him?

A. The second time I was there.

Q. What was he doing at that time?

A. He was drinking.

Q. That's all you thought was across the hall was Fleetwood?

A. Yes.

Q. Are you sure you didn't go across the hall to kill him?

A. Yes, I'm sure.

[79] Q. How did you carry the knife across the hall when you went in there?

A. Carried it loosely in my hand.

Q. Just holding it out?

A. The blade was like this (indicating). Just loosely in my hand.

Q. Were you displaying the knife when you went in?

A. I just walked in there casually with it.

Q. You walked in there casually with it?

A. Sort of.

Q. What do you mean sort of casually with the knife?

A. I had it hanging down. My arm was hanging loose.

Q. Were you holding it by the blade or by the handle?

A. Partially blade, partially handle.

Q. Sort of in the middle there then?

A. Yes.

Q. Were you trying to hide it —

A. No.

Q. —as you went in there?

A. No, I was not.

Q. Why did you enter the apartment from the back door?

A. The back door is right across the fence from my friend's [Mr. Cole] front door.

* * *

*Closing Argument of Dana C. Reed,
Deputy Attorney General*

Volume XI at 8-11, 15-22

[8] I have made no pretensions to attempt this, nor is it required. I do not think anybody to this day knows why Doris Epps was stabbed or actually how she was killed, and in what sequence, and so forth. This was a senseless crime, both during the crime and acts of the participants afterwards. A senseless crime. No rhyme or reason to it.

As far as who did the particular stab wounds or how many or what combination of either helping or inflicting the actual stab wounds by each of the two participants, Daniel Pregent or Robert VanArdsall, we will never know, because there are really only three people who could answer that question, two of them who are defendants, who may well be obviously biased in their view of what happened, and the third being Doris Epps. It is our contention, however, that the evidence shows, at the very least, that Robert VanArdsall was the most involved in this case, and I will explain that as I go along.

There are a lot of factors in this case that are disputed, but there is a bottom note as to what happened that is undisputed. That is, we have an undisputed murder in this case, the murder of Doris Epps, forty-seven years old, five foot four, one hundred five pounds. Dr. Tobin testified that she died of massive hemorrhage due to stab wounds of the [9] viscera, which included the heart, the liver and left lung. She had at least eighteen stab wounds of the incise kind, that is, the cutting across, and stab wounds of the puncture-type variety. She had three to the liver, incised wounds of the neck, two wounds of the heart, and,

as you remember, there was one entrance where Dr. Tobin testified that the knife went in, was withdrawn, and went right back in. It was obviously that entry wound where she found two stabs on the interior of the heart.

We have that long wound which goes from roughly the throat area all the way to the groin, and this was where the colon and intestines were protruding from when the body was found. We had three incised wounds of the vagina, stab wounds of the vagina, and one deep wound of the buttock.

In addition to this, among other things, you will have the autopsy report, if you care to read that, and you will have the pictures. Hopefully, you remember Dr. Tobin's testimony. You have the blunt-force injury to the left side of the victim's face, and a laceration to the left ear.

It may appear that I am being unduly gruesome, but the testimony was offered for a particular point, and I am offering it for a particular point. These wounds show there obviously was no accident. They show the conscious object [10] or purpose to cause death. We are not just talking about one isolated little nick. Let's just discount the blunt-force injury, and so on. We have eighteen different movements with a knife, and one of those eighteen movements is the long cutting which was the long wound.

A concerted effort. It speaks very heavily of the area of intent, and in addition to that, it is our contention that with that number of wounds, not just one person was involved. I am not saying that with that number of wounds one person could not do that, but if there were two people at the scene of that crime, two people participated with that number of wounds.

It was Dr. Tobin's testimony that the time of death was roughly between 12:00 o'clock and 1:00 o'clock, and that squares, basically, with the other evidence presented by the witnesses who had some contact with the scene. We also have, going back again to the issue of intent, not only the stab wounds to the body—and we do not know how many were missed—but we know there were two more. The sweater was cut. The bra was cut. The sweater was completely cut. Again, that is going to the issue of intent.

So we have the victim's body. That is undisputed. I am sure it is disputed as to how many people committed the [11] crime, but undisputed as to her injuries.

Another area, Robert VanArsdall is six foot two inches. How was he found? He was found at the scene of the crime. In fact, he goes into the Fleetwood apartment and is seen in this condition, and the police subsequently find him in possession of what we contend is the murder weapon, the serrated kitchen knife. We say it is the murder weapon, and, again, I do not think there is a dispute. The defendant himself admits taking this out of the body. But just to scientifically pinpoint this, we know the only blood is the victim's. A bloody mess. Along with a watch, a stain from the Fleetwood's door, and an ashtray, Dr. Lee was able to pinpoint exactly an antigenic marker and you will have that GLO-2 antigenic marker which belongs only to the victim. The rest of the items are consistent with her blood type.

We have, again, the defendant in possession of the murder weapon. Also the watch with not only blood on it, but human tissue. Again, this is surely after the crime. We know he had it over at Fleetwood's apartment. Bloody

hands. There is evidence of that from a number of factors, including State's Exhibit No. 37, the bathroom sink over at the Fleetwood's. You will have an opportunity to see this picture in the jury room. This will be the colored picture of the scene. Take a

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[15] Mr. VanArdall's socks had the victim's head and pubic hairs on them. His pants had the victim's pubic and body hairs or hairs similar to hers. The defendant's underwear had her pubic hairs and sweater fibers on it. His blue shirt had the victim's body hairs on it. All those items had all that hair or those types of hairs.

Pregent's clothing, as far as hair and fiber, nothing on the plaid shirt. The Jockey shorts had no urine. No urine on his jeans. The shirt which we contend he wore at some point had the victim's pubic hairs and body hairs on it. This was the shirt in the trash can. The towel in the trash can in the bathroom had the victim's body hairs. The socks had the victim's body hairs or hairs similar to the victim's, which we contend are hers.

A brief chronology of what happened up until the body was discovered, as I am sure you are well aware of by now, is that we have the New Year's Eve party starting somewhere around noon in Fleetwood's and Pregent's apartments, with a number of people in and out during the day. We had spaghetti and pork chops for dinner. The defendant goes there. He leaves for a while, and then he comes back. At 11:25 Cheryl Foraker lets him off just down the street from this area. He has asked her out, and she turned him down.

[16] Daniel Pregent, according to the testimony, put Doris Epps to bed somewhere between 11:00 and 11:15. Some of these times may not exactly correspond, but they are pretty close.

Fleetwood testified that he went over to Pregent's and saw the defendant and Pregent between 11:00 and 11:30. He said he did not see Epps at that point, but he only got a shot of across the diagonal of the bed, and she could very well have been in the bed and he could have missed her.

Jane Meiner went over to look at the time at seven of 12:00. On State's Exhibit 58 you can see the clock she looked at. She marked the spot she was standing in. Down here (indicating) is where the body was. She saw no body when she went in to look at this clock at seven of 12:00.

Fleetwood passes out after he hears the bells of New Year's Eve. The next thing is that Meiner sees the defendant. He knocks on the door and says, "It's Bobby." He comes in the way I previously told you. She does not see the knife initially. She sees it in his right hand.

The defendant is arrested and taken into custody on the 1st of January. Early that morning he gives his first statement to the police. He contends today that he was confused in certain aspects in giving the statement. However, he was [17] not confused in his statement when he related to the police—and you will have a transcript of the January 1st statement, and you can also listen to the tape again—that he was at the New Year's Eve party there between 4:30 and 6:00 o'clock. He told them he ate spaghetti and pork chops. He said he had to walk to a friend's

house. We know that was a three- to four-mile walk to Cheryl Foraker's that night.

He said he was back to Pregent's around 12:00 o'clock. He walked up the back way, he said. He said he saw someone in bed. Pregent and he talked. He had a couple of sandwiches. He then laid down on the cushions. The next thing he remembered, he thought he was going to be sick. So he went out into the hallway.

Then he saw a blonde-haired lady out in the hallway. She went to Pregent's door. He followed her. She saw the body and became hysterical, he said. He went in and kneeled by the body. That was his explanation of how he got blood on him. He was trying to calm her down, and he was also trying to get Fleetwood up, he said.

These are all statements he said on the 1st. He did not use Fleetwood's bathroom, he said. He washed his hands in the kitchen. He denied having a knife at least five times in that statement. He says today that the reason he did that [18] is because he was scared.

There is no mention of sex between him and Doris Epps when he talked to the police. In fact, he never mentioned sex. In the second statement he said that the reason for this was that he did not want to get a related charge.

He, on this occasion, denied telling anyone he had been in a fight. He said he did not tell on Pregent because he did not want to get his buddy in trouble. This is what he said today, he did not tell on Pregent because he did not want to get his buddy in trouble. He said he lost his watch, and this is when he said the bruises on his knuckles—initially he denied having bruises on his knuckles. Then

he said it could have come from the cat. "I don't have any bruises on my knuckles." On the 3rd statement it changes somewhat. In fact, it changes in a rather important way. In his 1st statement he said he did not know what had happened.

This is the same as Daniel Pregent has been contending both of his statements. Remember, Pregent just does not know what happened. He thinks it is a jealous boy friend. He slept through the whole thing. That is what VanArsdall said in his first statement and even today contends in part.

In his statement of January 3rd, he says, "Pregent killed her." He said he got there around 11:30 and was [19] asleep, and the next thing he remembers is Pregent dragging her past his feet into the kitchen. Much of this is the same as his testimony was the other day. He then says he looked up and Pregent struck him on the back of the neck. The next thing he knows is he went into the kitchen and Pregent is in there cutting on her. He says he tried to pull Pregent off, but Pregent pushed him and he fell almost on top of the body. Pregent hit him again. He said he laid there a couple minutes, and Pregent had left the knife in her during this time. This is again his January 3rd statement. Then Pregent comes in from the sink. He has put his shirt back on, and then he laid down.

He said while the cutting was going on Pregent had blood on his chest and his arms. He said he picked up the knife and went across the hall. He admitted on the statement that he told the people across the hall he had been in a fight. He said he did not know why he took the knife out of the body. As far as sex goes, he said he was too tired for sex.

There is another statement of the defendant's that I do not believe is disputed, and this was the statement to Detective Fortner the morning of the arrest, the morning when the police discovered this incident, and that is when he said he got the blood on trying to help the woman. This was made [20] out in the hall before he was taken to the police station.

He disputes the statement made in front of Robert Montgomery of, "I didn't think it would go like this." He doesn't remember that statement. His testimony obviously differs, in the most important respect, from what he said on the first occasion and what he said on the second occasion. He now admits to having sex. He said he arrived and Pregent had his pants and shirt on. This is my memory, again, and my notes of what his testimony was the other day. Pregent told him he could sleep there. Someone was in the bed. He didn't know who. Both Pregent and he are sitting on the cushions drinking some Southern Comfort.

He talked with Pregent for a while. Pregent left the room for a while. While Pregent left the room, he said this person sits up and says, "Do you want to have sex?", and he says, "Sure." He removes his clothing. He did not mention his socks. I imagine he removed his socks. He said he removed everything else. They had sex. He does not know what happened to this person after that, and he says he put his shorts and pants back on in order to go to sleep.

Pregent brought in a towel. They talked a while longer. Then he attempted to sleep, and then at some point he noticed this body being drug by him, Pregent dragging it by the wrist. [21] He looks up and wants to

know what is going on, and Pregent pushes him in the back of the neck. He is out for a while. The next thing he does is he puts his shoes on and ties them up. They are tennis shoes. He goes out in the kitchen, and there he sees that gory sight with the stabbing area under the heart and under the rib cage. He tried to pull Pregent off. Pregent twisted and pushed him out. He punched him again in the back of the neck.

Bowers saw him on the 1st and 3rd, and there was no bruises except on the knuckles. At this point Pregent had no shirt or socks on, and he was making animal noises. The second time he was punched, he came to and he was momentarily dazed were his words. He looked up and Pregent has come out of the laundry room with a fresh shirt on. This was that plaid shirt that nothing was found on. No blood. But, remember, prior to this he says Pregent's chest, arms and the bottom part of him was covered with blood. He says again that he pulled the knife out and walked across the hallway with it to protect himself and to get it away from Pregent so Pregent would not do any more cutting.

Before he did that, however, he carried the knife into the bedroom where Pregent was. Of course, when he got over across the hallway someone got the knife away from him, [22] and put it in the sink. He also has a torn pocket on his blue shirt, because he was trying to put a packet of cigarettes in there.

This is the story the defendant on this occasion is asking you to believe. If you believe it, the defendant is not guilty, because he has not committed the crime. It is our contention, however, that just from a naked look at

the evidence, without even going into Dr. Lee's testimony, that the story is unbelievable. To begin with, the evidence shows, in spite of the story, that there is no reasonable doubt as to the defendant's guilt as, at the very least, an accomplice in this case.

Before we get into even what Dr. Lee testified to as to how he believed or his theory of the crime was committed, and so forth, just compare—and you will have those items back with you in the jury room—the defendant's clothing with Pregent's clothing. Who was the most involved if you are going to compare clothing? On Pregent's pants the only contact is in the area of the knees down, the back and front. Only that type of pattern where a blood source comes into contact and you obviously have a great amount coming in and going into it. No splatters. No droplets. Nothing on his socks. The shirt had nothing on it, but we are not contending that he wore [it].

*Closing Argument of William N. Nicholas,
Attorney for Robert E. Van Arsdall*

Volume XI at 30-43

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[30] All of these resources of the State are lined up against one man. It is an advantage.

Third—and it is obvious here again—at the close of the trial the State addresses you first. The State is going to have an opportunity to address you one more time after myself and Mr. Williams will talk to you. That means that the State is going to have the last word. So I would ask you all to please pay as much attention at this time as you have throughout the trial, so that we can do our best to address our remarks to you.

This has been a long trial. You have heard from many witnesses. There have been many delays. You have been in and out of the jury room innumerable times. I would like to take this opportunity to thank you all for your patience and thank you for doing your duty up to this point as jurors. You have been patient. You have paid strict attention to the evidence, and I am asking you now to just bear with us and hang on a little longer and to continue to do your duty until you are finished deliberating.

Essentially, the State has produced three different kinds of witnesses in this case. The first class or group of witnesses produced are people who have tried to give you some [31] background, either background about the party or background about the victim or background

about the events that led up to this incident. Generally speaking,—and I think it must be obvious to you—the problem with this entire class of witnesses is that none of them saw what happened. We do not have an eyewitness among any of those witnesses. All they are really able to testify to is what happened during the day of December 31st and what happened up to late that evening. None of them saw the crime.

Secondly, the State has offered testimony of various police officers. Naturally enough—and I think this is obvious too—they all arrived after the events. None of these individuals saw what happened. The police did the best they could under the circumstances. They did their job. They arrived and they made two arrests. Keep in mind, however, that they arrived after Doris Epps had been murdered.

Third, the State has produced two expert witnesses. The first of those was Dr. Judith Tobin, the Delaware State Medical Examiner. The second of those was Dr. Henry Lee. Dr. Lee based his opinion on physical evidence that he examined and certain photographs. Both of the State's experts told you they did not go to the crime scene. They did not inspect it.

[32] I would also like to take this opportunity, before going into what these various witnesses said, to tell you what is not in dispute, because I think that is important. There is no dispute between the State and the defense that late on the 31st of December, 1981, or in the early morning hours of the 1st of January, 1982, that Doris Epps was horribly and brutally murdered. There is no dispute about that. If the State has proven anything in this case, it has certainly proven that.

Someone intended to kill Doris Epps. This killing was no accident. It was a savage and brutal murder. That is not in dispute.

The defense does not dispute that Robert VanArdsall was in Daniel Pregent's apartment and he was there when the murder occurred. There is no dispute about that. We do not dispute that after Doris Epps was murdered, Mr. Van Ardsall left Daniel Pregent's apartment carrying the murder weapon. His clothing at that time was splattered with blood. You heard one of the witnesses testify that his shirt looked as though he had a nosebleed.

He walked across the hall carrying the murder weapon, and he knocked on Robert Fleetwood's door. There is no dispute as to that. The State has offered evidence to prove that is so.

[33] Nor do we dispute that after he entered Fleetwood's apartment and washed his hands, he told Mrs. Jane Meiner and Mark Mood that he had been in a fight, and he told them there was something wrong next door. There is no dispute as to that. None of these facts are in dispute.

Ladies and gentlemen, the only issue that is in dispute at this trial is whether Robert VanArdsall is responsible for the death of Doris Epps. That is the only thing that is in dispute. It is what you must decide. I should say that the burden is on the State to prove he is responsible for that death. That is what is in issue here.

Let's take a look at the first class of witnesses that the State brought on. These are witnesses whose purpose was probably to set the scene for you. The very first witness we heard from was Alvin Epps, the victim's husband. Ladies and gentlemen, we all feel sympathy for Alvin Epps.

There is no question about that. But your job as jurors is to try to put aside any sympathy that you may feel and to analyze all the evidence that you heard and analyze all the facts that you heard and to make a determination based only on that analysis and not on any sympathy that you may feel.

In fact, if you will think back that long ago, since he was the first witness that you heard, all he really testified [34] to was that he met his wife that morning. They have been separated for some time. She asked him to drive her downtown, and he did that. He dropped her off in front of 11 East Commerce Street, and that is the end of his involvement. He drove away. He said that he expected she might be at a party that he was going to later that night, but that is it. Alvin Epps really had nothing to offer you in trying to help you determine who is responsible for the death of his wife.

Next we have William Whittaker. He is the landlord. Both Daniel Pregent's and Robert Fleetwood's landlord. The importance of his testimony, it is our contention, is limited to just a couple of statements that he made, because they corroborate some things that other witnesses testified to.

The first of those two things is that William Whittaker noticed that a hole had been kicked in his hall, and there is a great deal of testimony about who kicked that hole in the hall. Mr. Whittaker went up there and found the hole and he had it repaired. The second thing Mr. Whittaker told you that I think is important is that when he went up to clean up Danny Pregent's apartment the next day or the day after the police had concluded their investigation, what does he find in the apartment but the

mattress? The mattress that you have seen photographs of. It is still in the apartment. He cannot [35] use it and he throws it away. He throws it in the trash. That is where that mattress is. It is not available as evidence because it is gone.

Next we have the first witness whom the State contends really can tell you anything. That is Cheryl Foraker. Miss Foraker testified that early in the day she had run into Mr. VanArdsall in the A & P and he asked her whether or not he could come out that night. She agreed, perhaps a little reluctantly, and he said, "Well, I will call you before I come," and she said, "Fine." Late that night or later that night he, in fact, goes out to her house, and he arrives there at approximately 9:00 p.m., according to her testimony, and he stays for an hour and a half. It is raining, and she agrees to drive him back into Smyrna, and she drives him to the parking lot of the Lewes Dairy, where the two of them, according to her, sit in the car and talk for about forty-five minutes.

She says that Mr. VanArdsall asked her for a date and that she would not go out with him. She refused to even take him up on his offer, and after that she says that she drove him to an area near the intersection of Main and Commerce Streets close to 11 East Commerce, and that is where she dropped him off.

The State will have you believe that Mr. VanArdsall [36] is so distraught and so frustrated at Miss Foraker's refusal to go out with him that somehow he immediately went up to Daniel Pregent's apartment and murdered Doris Epps, a lady he never laid eyes on before that day. Ladies and gentlemen, I submit that that just does not im-

port with the facts that you heard in this case, and it is ridiculous.

You heard the defendant testify that he was really not hurt by the way it turned out. You heard him testify it is not the first time he has been turned down. But you heard something more important than that. You heard Cheryl Foraker. Cheryl Foraker described him as a little bit upset. That is what she thought, a little bit upset. Does a little bit upset sound like you would describe somebody who just formed murderous intentions because he has been deprived of a date?

One last thing that Cheryl Foraker says is that she knew where Robert Cole lived. Keep Robert Cole in your minds, please, because you will hear some more about him a little later on. She knew where Robert Cole lived, and she knew he lived near Four Corners, the intersection of Main and Commerce Streets, and that is where she dropped Robert VanArdsall off, near the residence of Robert Cole.

Ladies and gentlemen, none of the testimony that you heard from Mr. Epps or Mr. Whittaker or Miss Foraker adds a [37] thing to the State's case. Let's take a look at three witnesses who may be able to be a bit more informative. First of all, we have Robert Crain. These witnesses are people who were at the party.

Robert Crain's testimony is interesting because it sheds some light on the other individual charged in this murder, Daniel Pregent. Mr. Crain says that he arrived at 11 East Commerce Street sometime early in the day; that people were going back and forth between Pregent's and Fleetwood's apartments; that a party was going on; and that everyone was drinking. He remembers Doris Epps. He remembers that probably because he was the

one witness who had known Doris Epps before that day. He knew who she was.

What did he say about Mr. VanArdsall? All Mr. Crain had to say about VanArdsall is that he saw him arrive sometime in the afternoon and he saw him leave. Crain thinks that VanArdsall may have been there for an hour—this is early in the afternoon—at the most, and he did not see him again that evening. That is the one and only time that Robert Crain sees Robert VanArdsall on the 31st of December, 1981. That is it.

Crain leaves at 11:15, and he believes himself to be the last to go. When he leaves he says that Danny Pregent and [38] Doris Epps are lying together in bed. If you will remember, he said that Doris Epps was still alive when he left. The two of them are in bed together.

In reference to Mr. Pregent, what does Cain [sic] have to say? Crain tells you that he has to physically restrain Danny Pregent from attacking Ida Mae Stevens. He described it to you. He said he had to hold him, and while he was holding him, Pregent became so violent that he kicked a hole in the hall between the two apartments.

You may also remember another one of the State's witnesses who said something about this incident, Jane Meiner. Her description of Pregent was—and this was her word—"wild." "He was wild." You should also recall, with reference to Mr. Crain, that he counted for you and enumerated for you the number of people who were there. He said there were eight people. He said other than himself, his brother, Michael, was there, Ida Mae Stevens was there, Scott Burns, VanArdsall, Fleetwood, Jane Meiner, Danny Pregent, and he says Mark

Mood. So he told you exactly who was there, and I will get to why that is important shortly.

Think about the testimony of Robert Crain. Did he offer any testimony that implicates Robert VanArasdall in this killing? I suggest his testimony offers nothing to prove that [39] Robert VanArasdall was, in any way, responsible for this murder.

Now we come to Robert Fleetwood. Fleetwood, like Crain, testifies that there are eight to eleven to twelve people there—that is his recollection—and that the people are going back and forth between the two apartments, and they are drinking all day. As a matter of fact, he says that he and Mrs. Meiner start drinking about 11:00 o'clock in the morning and they are drinking hard liquor. He finishes his evening with Fleetwood, he said, at precisely 12:05, because he knows the bells rang. That is the last thing he heard before he passed out drunk.

In fact, he was apparently so drunk that later on when Meiner tried to awaken him by throwing water on him, she could not get him up. Mr. VanArasdall could not get him up when he tried. As a matter of fact, the police could not even get him up. They had to carry him out of the apartment. So he is obviously intoxicated.

Keep those facts in mind when you decide how you are going to judge the credibility of what Robert Fleetwood said, because he says that between the hour of 11:00 p.m. and whenever it was that he passed out, he saw something that is important to this case.

I should also, just to go back, remind you that it is [40] Robert Fleetwood who invites Doris Epps to this party. She is there because she comes to look at his apart-

ment. He has been told to vacate because he is not paying his rent, and she comes up to look at his apartment. He asks her to stay. That is why she is there.

As to VanArasdall, Fleetwood recollects that VanArasdall arrived somewhere around 4:30 in the afternoon. He recollects he eats supper there, and he says, "I think VanArasdall stayed about fifteen minutes." That is the last that Fleetwood remembers of VanArasdall until later.

According to Fleetwood, after VanArasdall and Burns and Berghorn leave, the party continues to roll along until about 10:00 p.m. when Fleetwood says he goes out to get more liquor. When he comes back he says it is 10:15 or 10:30 and the fellow named Mark Mood had just arrived at Fleetwood's apartment. He says that Robert Crain and somebody else are in his apartment and the place was a mess. An argument had been going on in his absence, and he threw them all out. He threw everybody out except Mark Mood and Jane Meiner. Please keep that fact in mind.

Now we get to the crux of his testimony. This is the reason why you heard from this guy. He says at 11:00 p.m., [41] for some unexplained reason, he crosses the hall to Danny Pregent's apartment. He peeks his head around the door—he says he aims his head around the door. Those were his exact words—and he sees the feet of Daniel Pregent and he sees Robert VanArasdall sitting on the bed. The lights are on in the bedroom, he says. That is why he knows who was there, and he says he does not see Doris Epps.

I wonder how he could have seen VanArasdall in Danny Pregent's apartment at 11:00 o'clock when Cheryl

Foraker says she is with VanArdsall until 11:25? Which of the two that you find more credible, unless you are able to reconcile those two stories, is for you to determine. Fleetwood or Foraker?

Let's say he is just wrong about the time. He admits he is drunk. Maybe he is just wrong about the time. He does not explain why he decides to cross the hall and have a peek into Danny Pregent's apartment. He does not explain why he did not go in. He does not explain why he did not knock. He does not explain why he did not say hello. He does not explain anything. All he does is—for some reason that was never elicited—go across, peeks in, and goes back to his apartment.

One other thing that Robert Fleetwood did not explain to you is the discrepancy between his testimony that he crossed the hall and the testimony of Jane Meiner, because, ladies and [42] gentlemen, Jane Meiner testified that after Fleetwood threw everyone out of his apartment but for her and Mark Mood, it is her testimony that Fleetwood never left that apartment again the rest of the night. He was right there until he passed out.

She says she goes across the hall. She says she goes across to look at the clock to see what time it was, because there is no electricity in Fleetwood's apartment. But she testifies Fleetwood never left. You have to judge for yourself what Robert Fleetwood saw and what he did.

Saying that you do believe this testimony of Fleetwood's, what does it prove? It proves what he has never denied. It proves what he has already testified to in this trial. It proves that he was at Danny Pregent's apart-

ment before Doris Epps was murdered. That is what it proves.

Once again, let's take a look at what this witness has to say about the other person charged with this murder, Danny Pregent. Fleetwood says that he hears Ida Mae Stevens and Danny Pregent out in the hallway arguing. According to Fleetwood, both he and Crain go out into the hallway, and it takes both of them to restrain Pregent. He says that is the time that Pregent kicks the hole in the wall.

Fleetwood also says that besides kicking a hole in the wall, Pregent is punching the walls with his fists.

[43] You think about this incident and whether, perhaps, it was not Danny Pregent who murdered Doris Epps and not VanArdsall. I suggest that you listen to the tapes of Danny Pregent. You will have them available to you. One of those tapes explains or tries to explain to Chief McGinty of the Smyrna Police Department that it is normal for people to pound walls with their fists. That is Danny Pregent's idea of normal behavior.

So now we have had five State witnesses. Two of them have told you about Danny Pregent's violence. Not one of these five have testified to any fact suggesting anything other than that Robert VanArdsall was in that apartment. None of them have offered you any evidence implying that he was responsible for the death of anyone or helped anyone kill Doris Epps.

Now we come back to the last of these witnesses who are setting the scene for you, Jane Meiner. Once again, Mrs. Meiner admits she gets to Robert Fleetwood's apartment sometime early in the afternoon. She begins drink-

ing. She is drinking 7 and 7's, I believe she testified. It is her testimony that the party is already going on when Doris Epps arrives, and she is there to look at Fleetwood's apartment.

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*Closing Argument of John R. Williams,
Attorney for Robert E. Van Arsdall*

Volume XI at 73, 91-101

[73] • • •

That is why there has been a trial before you ladies and gentlemen. So that Bobby VanArdsall can tell his side of the story. That is what he has done. That is what we promised you in the opening statement. Bobby VanArdsall took the witness stand and told you what happened. He was subject to cross-examination by the State. He answered the State's questions. This is the first opportunity that Bobby has had to answer the accusations against him before a fair and impartial group such as yourselves.

Bobby is not charged with being an evil person. You can no more condemn him for drinking alcohol or participating in casual sexual activities than you can for his beliefs, his race, or his religion. Obviously, Bobby should have been forthright with the police when he was interrogated by them on the morning of January 1, 1982, but that, at worst, is only hindering prosecution. That is not murder.

I asked Bobby when he testified, "Why didn't you tell the police what happened the first time?" His explanation was that he was scared. Plain scared. He is a twenty-two-year-old young man. He dropped out of school in the ninth grade. He had been drinking. He was arrested. He was placed in a cell at the Smyrna Police Department and then interrogated.

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[91] * * * Cheryl Foraker admitted, "It might be inconvenient, because my friend was visiting from out of town, but I didn't tell him not to come." What does Robert VanArasdall do? He tries to call her before he goes out there. The line is busy, however. So Robert VanArasdall, unable to reach Cheryl Foraker, then proceeds to her home. He arrives. Cheryl Foraker was at home, her friends were at home, and her mother is there.

He spends some time at Cheryl Foraker's house. Cheryl Foraker drives him back into town. It is raining and cold at that point in time. They sit and talk in the Lewes Dairy Mart. There is an exchange with Robert VanArasdall where he asks her to go out, and she says, according to Mr. VanArasdall, that she is not ready at that point in time. She says he is a little bit upset. She then lets Mr. VanArasdall out at the Four Corners area. She places the time at approximately 11:25 p.m.

All of these details up to this point are obviously not that significant. What is significant—and it is significant because this is the only real witness who has testified who can tell you what happened from this point forward—is that Robert VanArasdall goes to the residence of Robert Cole. Robert Cole was not at home. Robert Cole's residence is in view of the back door of Daniel Pregent's apartment. Bobby [92] VanArasdall sees a light on in the kitchen of Daniel Pregent's apartment. He goes up the back stairs, knocks on the door, and is admitted into Daniel Pregent's apartment by Daniel Pregent.

They talk for a while in the kitchen. They eat a peanut butter and jelly sandwich and go to the bedroom. There is an individual on the bed. Robert VanArasdall does not know who it is. Daniel Pregent and Robert Van-

Arasdall converse for a while. They have a drink of liquor. They play with the cat. The cat runs around the apartment and up on the bed, and Robert VanArasdall tells you he is sitting on the bed. The individual on the bed is wrapped up in a blanket.

At some point after that Daniel Pregent leaves the apartment. If you listen to the tapes of Daniel Pregent, he will tell you he leaves the apartment and he goes next door to Robert Fleetwood's apartment. That is Daniel Pregent's explanation. He says when he leaves there is nothing unusual. Doris Epps is on the bed and Robert VanArasdall, he says, is walking around. When he returns he also notices anything [sic] unusual. Doris Epps is apparently still on the bed. Robert VanArasdall is still walking around. That is the time when Daniel Pregent says he is out of the apartment.

Robert VanArasdall, in his testimony, is not sure if Daniel Pregent leaves the apartment or goes into another room [93] or where he goes. All he knows is for a time he is left alone in the living room-bedroom area. The individual on the bed either awakens or she has been awakened and has not said anything. She asked him if he wishes to have sexual relations. He gets into bed.

His testimony, as I recall it—and it is your recollection which controls—is that he takes his pants, shorts and shoes off, gets into bed, leaving some of his clothing on, and has sexual relations, and then he is back on the floor. Daniel Pregent then returns, and the next thing he knows, he is stretching out on the cushions on one side of the bed.

Daniel Pregent gets up at some point, goes out in the kitchen, leaves a light on in the kitchen, which I guess had

been turned on before, and returns back to the bed. Robert VanArsdall says he feels some movement on the bed. He does not know exactly what goes on, and he dozes off.

What occurs after that? He is awakened at some point while curled up on the cushions. How he is awakened is that someone is dragging a body by or near his feet. He starts to sit up. He sees it is Daniel Pregent dragging the body of Doris Epps. He told you the body was limp. He asked Daniel Pregent what was going on. Daniel Pregent does not reply. He hit him. Daniel Pregent hits Bobby VanArsdall while he is [94] seated on those cushions.

Bobby VanArsdall sits there for a second while Daniel Pregent continues to drag the body of Doris Epps out of the room. He says he has to put his shoes on. He notices something wet on the floor. He goes into the kitchen, and he sees Daniel Pregent. He already described what he sees in the kitchen.

After he succeeds in pulling Daniel Pregent away from Doris Epps, he gets knocked down by Daniel Pregent. He almost lands on the body of Doris Epps. His testimony was he thinks he gets hit from behind. He is down on the floor. He is not sure were Daniel Pregent is.

The next time he sees Daniel Pregent, Daniel Pregent is coming from the utility room. He is putting on what appears to be a clean shirt. There is some dispute, I guess, as to how or when or where Daniel Pregent might have washed up, because the testimony of Bobby VanArsdall is that Daniel Pregent had a great deal of blood on him when he was stabbing and cutting the body of Doris Epps. The important thing to remember as you

look at this diagram of Daniel Pregent's apartment is that there is a sink in that utility room, and it is not that unusual, I submit to you ladies and gentlemen of the jury, for blood to be washed down a sink.

[95] Look at the sink in Robert Fleetwood's apartment. There is a photograph of that. There seems to be blood all over the place. Why is that the case? Because of the water pressure. There is something wrong with the water pressure in Robert Fleetwood's sink. But if the water is running, it can wash the blood away. The sink was not sent to Dr. Lee for microscopic analysis to see if there was residue of bloodstains in the porcelain sink. That was not done. Blood was not visible in the sink, according to the police testimony.

There is something interesting about this testimony about blood and where it is visible and where it is not. This is a towel introduced by the State in this case. It was found in the bedroom of Daniel Pregent. There are stains on here, and these stains apparently are not blood. That sure is a stained towel though. Dr. Lee's conclusion, however, is that that is not blood in this case.

I submit to you that in this particular case it is very difficult to tell what is or what is not blood. If that is not a bloody towel, I am not sure I know what a bloody towel would look like.

Robert VanArsdall tells you he goes across the hall. Foolishly and for no reason, he picks up the knife. He says he did not want to leave it there for Danny Pregent, and he did [96] not know what Pregent would do if he had another weapon. But he takes this knife, the murder weapon. He takes it across the hall. He does not flee.

He does not run out the back door where he came in and where, apparently, no one, with the exception of Daniel Pregent, saw him there.

No, he does not do that. He goes across the hall where he knows Robert Fleetwood lives, and he knocks on the door. Jane Meiner answers when he says who is there. He says, "Bobby." She thinks it is Bobby Crain. She opens the door, and he goes inside. He tells them he has been in a fight, and he surrenders the weapon. He is not keeping the weapon from anybody. He does not resist.

The weapon is taken away from him, and he tells them that there is something wrong across the hall. He tells Mark Mood and Jane Meiner that.

I submit to you is that the action of a murderer? Is he going to take the murder weapon? What can be more incriminating than to go carrying around the bloody murder weapon, take it across the hall, tell other people what has happened, and not run away?

This murder did not happen in Bobby VanArdsall's apartment. This was a body in the kitchen of Daniel Pregent. But what are the actions of Robert VanArdsall?

[97] That is what you have to examine in this case. You are the finders of fact. You are the individuals who must determine the credibility of the witnesses in this case.

One of the things you must consider and which, I am sure, the State will emphasize in rebuttal is the statement of January 1, 1981, by Bobby VanArdsall to the police. He says many things in there which I told you, quite candidly, in the opening statement, were not true. There is some narrative in there where he goes out in the hall because he feels ill, and the next thing he knows, there is a body

in Daniel Pregent's apartment. That is not what happened, and Bobby VanArdsall told you that that is not what happened. In fact, he told the police voluntarily two days after that. Why did he make a false statement to the police? His explanation is that he was scared. He was just plain scared. He is a young man. He was twenty-two at that time. He is twenty-three now. He had witnessed a savage attack by Daniel Pregent. He is obviously confused.

Listen to the statement? He tells you at several points or he tells the police at several points that he is confused. He denies having sexual relations with Doris Epps. That is not true. He did. The reason he denies it is he told you he was afraid he was somehow going to be charged with some sort of related offense, some sort of sex offense.

[98] The boy had already been charged with murder. He told you or he told the police that he did not know who did it. Why did he say that? His explanation was he did not want to get Daniel Pregent in any more trouble than Danny was already in. He had known Daniel Pregent. He had lived with Daniel Pregent. But two days later he does tell the police what happened. He tells them that Daniel Pregent committed this offense, and he told you on the witness stand that he had nothing to do with committing the offense and that it was Daniel Pregent's act.

What he tried to do, as best he could, is somehow help the poor victim, and he ends up getting blood all over him. He foolishly takes the murder weapon across the hall. Perhaps it is not so foolish after what he has just wit-

nessed. The next thing he knows, within a matter of minutes, he is being arrested and charged with murder.

One of the things you must evaluate when you look at the testimony of these witnesses, is the memory of the witnesses. Memory is a fleeting and a transient thing. These events happened some nine months ago. Many things are easily misunderstood and unconsciously misrepresented. These New Year's Eve party goers, many of whom were intoxicated, have fading memories.

[99] Witnesses are nervous when they appear in court. There is confusion, we submit, and inconsistencies in certain of the testimony. It is your job, as the jury, to attempt to reconcile those inconsistencies.

Mr. Nicholas has told you of the very severe inconsistencies between the testimony of Timmons and Mr. Montgomery regarding the entry of Pregent's apartment and the arrest of Daniel Pregent. It has also been pointed out to you the inconsistencies or possible shaky memory of testimony between Mrs. Meiner, Robert Crain, and Robert Fleetwood. I do not think that that is of that great a significance, except to point out to you that memories do fade, that the witnesses are only human, and that they are testifying as best they can.

One matter which has been raised and which seems to be of great importance to the State is whether or not Robert VanArsdall was asked, during his second police interrogation on January 3rd, if he had sexual relations. I think the easiest way for you to clear it up is to listen to the tape. Read the transcript and see what was said.

On Page 4 of the transcript of the January 3rd statement to the police there is a question about three-quarters

of the way down. Detective Bowers says—they are talking to Robert VanArsdall—"Did they"—not, "Did you . . . , but, [100] "Did they have sex that night?" Mr. VanArsdall replies, "I heard them move around in the bed. I figured that's what they were doing."

On Page 5 there is a question from Detective Bowers, "That didn't bother you?" VanArsdall replies, "No. I was too damn tired." Detective Bowers said, "You just laid there?" VanArsdall said, "Yeah." Bowers said, "You didn't get excited by all the activity?" VanArsdall says, "No."

We submit it is clearly plausible that Robert VanArsdall understood that he was not being questioned about his own sexual activity that evening. The first question on Page 4 was, "Did they have sex?" He said, "No." There were follow-up questions. How is he to assume that in Detective Bowers' mind that relates to his own sexual activity? He denied it the first time. He just was not asked the second time. The second time he did tell you and he did tell the police.

You heard his statement that, yes, he had possession of the weapon and, yes, he knows who committed the offense. Daniel Pregent committed this offense. What are you to think of the January 1, 1982, statement that was taken from Robert VanArsdall? We submit that you should look upon it as a confused statement by a young man in very trying circumstances. [101] It is almost the kind of thing that a little child would make up. It is not a well-concocted story by some devious mind. He just denies all kinds of things. Denies things that are easily verifiable.

"Did you have the knife?" "No, I did not have the knife." There were two obvious witnesses who saw him in possession of the knife, Mark Mood and Mrs. Meiner. They took the knife from him. He gave them the knife.

Mr. Nicholas discussed in great detail the police investigation. The only thing I would want to add is that we are not attempting to put the police on trial in this case. That is certainly not the point here. The only individual who is on trial here is Robert VanArasdall.

But the important thing to remember about the police investigation is that the police fastened on two suspects in a very short period of time. They determined they were guilty. This was a snap arrest. Less than twenty minutes. We submit to you that with the exception of wondering whether or not this guy might only be an accomplice, this case has not been thoughtfully reevaluated by the authorities any time since the arrest on January 1, 1982.

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*Rebuttal Argument of Dana C. Reed,
Deputy Attorney General*

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[115]

* * * They would pick where a witness would differ—these are the background witnesses, the witnesses at the party—from another one, and they would use that witness to show how the other one differed, and so forth, and they, in effect, were picking and choosing the parts you should believe of the witness, but then the parts that hurt them, you should not believe.

Again, it all came down to what is there a dispute about? Is there a dispute in this case as to what those witnesses basically said, and that is that Robert VanArasdall was there later in the evening and he was over at Pregent's? We know that by his own admission.

He eventually took the murder weapon over across the hallway to Fleetwood's apartment. There we have one of their shining points of defense, that is, why did Mr. VanArasdall take the knife across the hall? Why didn't he just run out? Was he acting like a murderer? How does a murderer act? In line with that, is there an average murderer?

You can see for yourself that this was a senseless murder. There was no reason for it, or no reason that anyone knows about anyway, other than Mr. VanArasdall and Mr. Pregent. No reason. A senseless crime, and senseless happenings after that crime.

[116] The sword cuts both ways. Mr. VanArasdall says today, "I was afraid. That is why I left the apart-

ment and went across the hallway. I wanted to take that knife over there to protect myself and to keep it away from Pregent, and I was trying to help that lady." Are his actions consistent with that, that is, being afraid? Why didn't he just run out the back if he was afraid?

Then he gives a lot of information out. He eventually says, "I think there is something wrong across the hall." Not, "I just have been in a fight with Daniel Pregent and he has ripped this lady up one side and down the other side. He punched me two times on the back, and we had a struggle." No. He says, "I think there is something wrong across the hall." Is that a normal response? Remember, that is the way he answered at the door.

Then, according to his theory, if the murderer is still loose across there, he goes over with Jane Meiner and comforts her and says "It's all right." The murderer is still loose in there.

You cannot explain everything. You cannot explain why he did that action any more than why Daniel Pregent just went back to bed. Is that consistent with being a murderer? He is so afraid of Pregent, and yet he goes and takes the knife, [i17] walks into the hall, and then goes back into the hall. He is just sort of meandering around. As I said, the sword cuts both ways. That is not consistent with his story.

Then they supposedly have this struggle in Pregent's apartment where he is knocked down, and so forth. This is Mr. VanArsdall. Take a look at the pictures. The defense would have you believe it is wall-to-wall blood. It is not. There is a large amount of blood in the kitchen,

you will see, where it came out of the body. There is a small trail—Detective Bowers characterized it as a narrow trail, and I think that is relatively accurate—from that into the hall and into the bedroom and living room, and that trail goes all the way to the foot of that bed where that spot is where Dr. Lee's theory is she sat down at some point, and then there is blood on the end of that bed, which you have seen, and on the floor at the foot of that bed. That is it.

Where do you see handprints? Look at VanArsdall's clothing. Where do you see him landing in blood? If there was a struggle in that room, surely at some point a hand would have come down. He would have hit it with his rear or he would have hit it somewhere in the front. The only contact pattern on his pants is on the right knee, and that is more consistent with doing some stabbing than it is falling down in a fight.
